

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

24 HOUR FITNESS USA, INC.,
a California corporation,

Plaintiff,

V.

BALLY TOTAL FITNESS HOLDING CORP., a Delaware corporation, and MICHAEL SHEEHAN, an individual,

Defendants.

Civil Action No. 08 CV 3853

Judge Joan Humphrey Lefkow
Magistrate Judge Morton Denlow

**REPLY MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS' MOTION TO
DISMISS THE FIRST AMENDED COMPLAINT FOR LACK OF SUBJECT MATTER
JURISDICTION AND/OR FOR FAILURE TO JOIN A NECESSARY PARTY**

I. INTRODUCTION

Defendants, Michael Sheehan and Bally Total Fitness Holding Corporation (“Defendants”), submit this reply in support of their motion to dismiss the First Amended Complaint of 24 Hour Fitness USA, Inc. (“24 Hour USA”).

II. ARGUMENT

A. SHEEHAN REMAINS DOMICILED IN CALIFORNIA.

In our opening memorandum, we pointed out that 24 Hour USA and Defendant, Michael Sheehan, are both citizens of California. In response, 24 Hour USA does not dispute that as of July 7, 2008 (when 24 Hour's Complaint was filed) Sheehan's permanent residence was in California. 24 Hour USA nevertheless attempts to establish diversity of citizenship by arguing that, as of July 7, 2008, Sheehan intended to move to Illinois at some later date. 24 Hour USA's argument is unavailing for two reasons. First, 24 Hour USA's argument ignores Sheehan's testimony that his intent as of July 7, 2008 was to remain domiciled in California. Second, even if Sheehan had intended to move to Illinois after July 7, 2008, the law deems him a citizen of

California until he permanently abandons his California residence. This had not happened as of July 7, 2008. Indeed, Sheehan remains domiciled in California as of today.

Courts determine a party's domicile as of the date of the initiation of the underlying lawsuit. Fidelity & Deposit Co. v. Sheboygan Falls, 713 F.2d 1261, 1266 (7th Cir. 1983) (jurisdiction depends on the facts as they exist when the complaint is filed). Moreover, a presumption exists in favor of a natural person's old, established domicile over any alleged, newly acquired domicile. Id. That presumption can be overcome only by evidence that the person has permanently abandoned his old residence. Viacom Inc. v. Flynn, 1997 U.S. Dist. LEXIS 2317, at *2 (N.D. Ill. 1997); *see also* Restatement (Second) of Conflict of Laws, Section 2, Topic 2 – Special Note on Evidence for Establishment of A Domicil of Choice (1971) (“A domicil is not lost until another has been acquired, and the burden of establishing a change of domicil is upon the party who asserts it . . . This principle is heavily relied upon by the courts.”) Thus, to determine whether 24 Hour USA has satisfied its burden, the Court must consider four elements, including: (1) physical abandonment of the first domicile (not just temporary departure); (2) physical presence in the new domicile; (3) intention not to return; and (4) intent to make the new location the party's actual domicile, not just an additional residence. Koerber v. Apollo Golf, Inc., 1993 U.S. Dist. LEXIS 1721, at *4 (N.D. Ill. 1993). Applying these principles to the instant case, it is manifest that 24 Hour USA has failed to satisfy its burden.

Although it is not his burden to do so, Sheehan has provided ample evidence demonstrating that, as of July 7, and currently: (1) he has not abandoned his first domicile (i.e., he owns a house in California and maintains his **primary** residence in California, where his family lives); (2) he has not physically established a new domicile in Illinois (i.e., he stays in hotels when he works in Illinois, has not purchased or rented a residence, and has no current intention to do so); (3) he does, in fact, intend to return to his primary residence in California (i.e., he returns to California every weekend where his family lives, and he has no intention of moving his family out of California); and (4) he does not intend to make Illinois his domicile (i.e., while there is a possibility that he may establish *a* residence in Illinois at some future date, he intends to retain a

California home as his primary residence). Declaration of Michael Sheehan Submitted in Support of Motion to Dismiss the First Amended Complaint (“Sheehan Decl.”), ¶¶ 2, 6, 7, 9.)

Instead of negating these facts, 24 Hour USA merely points out that Sheehan admitted in his deposition that on or about June 20, 2008 he signed a letter agreement with Bally stating that he will establish a permanent residence in Illinois after July 7. From this, 24 Hour USA leaps to the erroneous conclusion that, as of June 20, Sheehan’s intention to become domiciled in Illinois was “fixed” and is dispositive of his domicile as of July 7. This argument fails.

First, 24 Hour USA fails to distinguish between the distinct legal concepts of “residence” and “domicile.” Although Sheehan’s letter agreement with Bally states that he will establish a permanent *residence* (i.e., not merely renting on a temporary or impermanent basis) in Illinois, the agreement does not state that Sheehan will change his legal *domicile*. Significantly, the letter agreement uses the term “permanent residence,” not “primary residence.” Indeed, Sheehan has testified that even if he has multiple residences, Sheehan intends to keep his primary residence in California. Supplemental Declaration of Michael Sheehan (“Supp. Sheehan Decl.”), ¶ 4 (a copy of which is attached hereto). *See* Restatement (Second) of Conflict of Laws § 20 (1971) (“When a person with capacity to acquire a domicil of choice has more than one dwelling place, his domicil is in the earlier dwelling place unless the second dwelling place is his principal home”).

Second, the fact that Sheehan intended, on June 20, to establish a residence in Illinois is irrelevant because between June 21 and July 7 intervening events occurred that caused Sheehan to change his mind. Specifically, Sheehan has testified that between June 21 and July 7 (*i.e.*, even before this lawsuit was filed): (1) Bally released Sheehan of his obligation to establish a permanent residence in Illinois by July 31; (2) Sheehan determined that there would be no reason for him to establish any residence in Illinois unless he prevails in the litigation with the 24 Hour Plaintiffs; and (3) based on these two intervening events, Sheehan decided not to establish a permanent residence in Illinois unless and until it seems appropriate to do so. (Supp. Sheehan Decl., ¶¶ 2, 3.) Consequently, as of July 7, Sheehan did not have a specific intention to establish *any* residence, much less his *primary* residence, in Illinois. (Supp. Sheehan Decl., ¶ 4.) Although

there remained, as of July 7, a possibility that Sheehan might establish a residence in Illinois at a future date, a court's jurisdiction cannot be built on a foundation of vague and equivocal possibilities. As a matter of law, domicile is determined based on an individual's actual intent as it existed as of the date of initiation of the underlying lawsuit. Fidelity & Deposit Co., 713 F.2d at 1266.

Unable to controvert the foregoing, 24 Hour USA has resorted to *ad hominem* attacks – contending that Sheehan is lying regarding his intention to maintain his primary residence in California, and regarding the events that occurred between June 20 and July 7. In particular, 24 Hour USA argues that Sheehan's declaration contradicts prior deposition testimony and therefore constitutes fraudulent averments that should be disregarded by the Court. This argument, however, is fallacious. A review of the Sheehan deposition transcript reveals that 24 Hour USA never asked Sheehan a single question concerning: (1) if Sheehan intended to maintain his permanent residence in California (which he does); (2) if he intends to keep his *primary* residence in California (which he does); (3) whether he intends to maintain California as his legal domicile (which he does); (4) whether any circumstances changed between June 20 and July 7, which caused Sheehan to change his mind about establishing a permanent residence in Illinois (which, in fact, occurred); or (5) whether, between June 20 and July 7, the letter agreement requiring Sheehan to establish a permanent residence in Illinois was ever modified (which it was). (Exhibit "A" hereto.) In short, 24 Hour USA asked Sheehan at his deposition only about events as they existed as of June 20 and failed to inquire at all regarding the facts as they existed as of the relevant date for a jurisdictional analysis, July 7, or at any time in between.

In light of the foregoing, Sheehan's intent is clear; he intended as of July 7 and intends today to be domiciled in California. Moreover, if there is any ambiguity as to his intentions, the Court should consider the following factors: ownership of real property, location of residence(s), voter registration, states of vehicle registration and driver's licenses, location of financial accounts, states in which taxes are paid, maintenance of personal services in a particular state, and personal and business ties within any given state. *See, e.g., Viacom Inc.*, 1997 U.S. Dist. LEXIS

2317, at *4; *Hough v. Hough*, 1992 U.S. Dist. LEXIS 19670, at *3 (N.D. Ill. 1992). A consideration of these factors shows that Sheehan was domiciled in California for the past 13 years, including as of July 7. The overwhelming majority of his property, including his clothing and automobiles, remains in California. (Sheehan Decl. ¶ 2.) He is licensed to drive, registered to vote, and pays taxes in California. (*Id.* at ¶ 3.) All of his financial accounts are held in California banks. (*Id.* at ¶ 4.) He does not own or rent property in Illinois, but maintains his home and mortgage in California. (*Id.* at ¶¶ 4, 6.) He maintains his utilities and personal services (such as phone service and mail delivery) in California. (*Id.* at ¶ 8.) Sheehan and his family intend to continue to live in California and maintain a home there as their primary residence even if he one day purchases a second permanent residence in Illinois. (*Id.* at ¶ 7; Supp. Sheehan Decl., ¶ 4.) In short, although it is not his burden to do so, Sheehan has provided overwhelming evidence that he and 24 Hour USA are both citizens of California, and therefore, this Court lacks diversity jurisdiction.

Although it is true that Sheehan listed his California house for sale, that fact does not support the conclusion that he intends to establish a primary residence in Illinois. Had 24 Hour USA examined Sheehan about this subject at his deposition, it would have learned that Sheehan intends (and, as of July 7, intended) to use the proceeds of the sale of his home – if it is sold at all – to purchase a new primary residence *in California*. (Supp. Sheehan Decl., ¶ 5.) Moreover, had 24 Hour USA examined Sheehan concerning the reason he listed his house for sale, it would have learned that: (1) before moving to his current home in San Ramon, California, Sheehan lived in Southern California; (2) Sheehan moved to San Ramon to be closer to 24 Hour USA’s corporate offices in Northern California; and (3) following his resignation from 24 Hour USA, Sheehan decided to relocate his family back to Southern California, where he and his family intend to maintain their primary residence. (Supp. Sheehan Decl., ¶ 5.)

24 Hour USA also asks this Court to leap to the conclusion that because Sheehan is allegedly wealthy enough to afford homes in California and Illinois, this supposed fact demonstrates an intention to abandon his domicile in California and to treat Illinois as his “real

home.” This argument too is flawed. It is precisely *because* Sheehan has the financial means to afford two permanent residences that the Court cannot assume that Sheehan’s potential acquisition of a permanent residence in Illinois constitutes an intent to abandon his domicile in California. As 24 Hour USA notes, in today’s world, individuals of economic means can afford multiple permanent residences. It is, therefore, incumbent upon the Court to carefully distinguish between an individual’s permanent residences, and that individual’s intention to make one of his residences his primary domicile. *See Viacom Inc.*, 1997 U.S. Dist. LEXIS 2317 (finding that defendant intended to remain primarily domiciled in Florida, despite the fact that defendant also possessed a \$2 million permanent residence in Illinois); *see also* 15 JAMES WM. MOORE ET AL., MOORE’S FEDERAL PRACTICE § 102.34[9] (Matthew Bender 3d ed.) (stating “[i]n determining which of the person’s residences is his or her domicile, the court must focus on the intent of the party, which requires an examination of the entire course of the person’s conduct”).

Upon an examination of the evidence, as opposed to mere conjecture, the only possible conclusion is that Sheehan has never abandoned his domicile in California and has never changed his domicile to Illinois. In *Viacom*, the District Court for the Northern District of Illinois dealt with a situation in which the defendant owned a \$2 million home in Illinois and spent three years treating Illinois as the “center of [Defendant’s] business life.” *Viacom*, 1997 U.S. Dist. LEXIS 2317, at *10. Regardless, the court found that the defendant was not domiciled in Illinois because he maintained a separate residence in Florida, kept his family in Florida, and treated Florida as his “true” home. Here, 24 Hour USA has made a far weaker evidentiary showing than that considered insufficient in *Viacom*. Unlike the defendant in *Viacom*, Sheehan has not purchased a residence in Illinois and has demonstrated that it has always been his intention to treat Illinois as merely a place to work before returning home to his family in another state. *Id.* at * 5; *see also United States v. Scott*, 472 F. Supp. 1073, 1079 (N.D. Ill. 1979) (“the residence of a spouse and other family members is a highly persuasive indication of the place intended as a permanent home”); Restatement (Second) of Conflict of Laws, Section 2, Topic 2 – Special Note on Evidence for Establishment of A Domicil of Choice (1971) (“Since a man’s home will usually be

with his family, the place where his wife and children dwell is likely to be his domicile . . . So when he leaves his family behind and goes to another place, his domicile presumably remains unchanged.”).

B. THIS CASE SHOULD ALSO BE DISMISSED FOR FAILURE TO JOIN 24 HOUR WORLDWIDE AS AN “INDISPENSABLE” PARTY.

A separate and independent basis exists for dismissing this case for lack of diversity jurisdiction. 24 Hour Worldwide, Inc. (“24 Hour Worldwide”) is a “required” and diversity destroying party pursuant to Rule 19 of the Federal Rules of Civil Procedure.

In opposing Defendants’ motion under Rule 19, 24 Hour USA makes much of the fact that Defendants’ moving papers do not explicitly distinguish between the terms “necessary” and “indispensable” parties. However, the archaic practice of distinguishing between “necessary” and “indispensable” parties under Rule 19 has fallen into disfavor. *See* Fed. R. Civ. Pr. 19, Advisory Committee’s Notes - regarding 2007 amendments (“‘Indispensable’ was used only to express a conclusion reached by applying the tests of Rule 19(b). It has been discarded as redundant.”).

Under modern practice, the relevant question is not one of semantics, but is a substantive question concerning the potential applicability and impact of Rule 19. Regardless of the nomenclature, the fact remains that the adjudication of 24 Hour USA’s claims cannot legitimately proceed without joinder of 24 Hour Worldwide as a party.

1. 24 Hour Worldwide Is A “Required” Party Because The 24 Hour Plaintiffs Have Certain Identical Interests But Distinct Causes Of Action, And Have Attempted To Impermissibly “Split” Their Claims In Separate Lawsuits.

Under Rule 19(a)(1)(B), a “required” or “necessary” party is one that has an “interest relating to the subject matter of the action” and who should be joined to protect the interests of either: (a) an absent party; (b) one of the present parties; *or* (c) the public interest in orderly and expeditious administration of justice. Fed. R. Civ. Pr. 19(a); Moore v. Ashland Oil, Inc., 901 F.2d 1445, 1447 (7th Cir. 1990) (purpose of Rule 19 is to “permit joinder of all materially interested parties . . . and avoid waste of judicial resources”). This is a fact-intensive inquiry, and the Courts must take into consideration the nuances of each situation. Hunt v. Pepsico, Inc., 2004 U.S. Dist.

LEXIS 8773, at *9 (N.D. Ill. 2004) (“there is no precise formula for determining whether a particular nonparty must be joined”). The facts of this case conclusively establish that 24 Hour Worldwide is a necessary party pursuant to Rule 19(a) because 24 Hour USA and 24 Hour Worldwide (collectively, the “24 Hour Plaintiffs”) have at least some identical interests, yet are impermissibly seeking to split their legal claims against Defendants.

No question exists that the 24 Hour Plaintiffs have an “interest relating to the subject matter of this action,” as is required by Rule 19(a). Both 24 Hour USA and 24 Hour Worldwide have an identical interest in the trade secrets at issue in this lawsuit, and both purport to have suffered damages as a result of the misappropriation of such trade secrets. Moreover, 24 Hour Worldwide has an additional interest in the outcome of this lawsuit because it has attempted to reserve the right to argue that the purported misconduct underlying this action also supports a separate, and independent, lawsuit against Sheehan for the alleged breach of the Shareholder Agreement Sheehan entered into with 24 Hour Worldwide, and which contains prohibitions against the misuse of “Confidential and Proprietary Information” and a restriction on competition.

24 Hour Worldwide’s interest in pursuing a separate lawsuit against Defendants for breach of the Shareholder Agreement is not theoretical or speculative. In the California Action, 24 Hour Worldwide alleged a breach of the Shareholder Agreement, arguing that, even if Sheehan’s conduct did not constitute theft of trade secrets, it nevertheless purportedly constituted a breach of contract. After the Contra Costa Superior Court denied the 24 Hour Plaintiffs’ request for a temporary restraining order, however, the 24 Hour Plaintiffs dismissed the breach of contract claim *without prejudice* and filed the Original Complaint initiating the instant action. Unlike the California Action, the Original Complaint and FAC do not contain any reference to or causes of action premised on the Shareholder Agreement. Instead, they are premised on the substantially narrower allegations concerning a purported violation of the Illinois Trade Secrets Act.

As the 24 Hour Plaintiffs originally alleged that the breach of the Shareholder Agreement supported the issuance of a temporary restraining order, one might wonder why they did not pursue a breach of contract claim in the instant litigation. The answer is provided in 24 Hour

USA's opposition brief to the instant motion, in which 24 Hour USA notes that it has not sued under the Shareholder Agreement because (as it is not a party to the Shareholder Agreement between Sheehan and 24 Hour Worldwide) it lacks standing to pursue such claims on behalf of 24 Hour Worldwide. (Opp'n, at 2, n. 1 ("While 24 Hour Fitness Worldwide was a proper party in the California action's claim for breach of a Shareholder Agreement between it and Sheehan, no such claim ever was pleaded in this action.")))

In other words, the 24 Hour Plaintiffs take the position that – although they are in complete privity with respect to their trade secret claims, they are not in privity with respect to claims relating to the Shareholder Agreement. *See Secretary of Labor v. Fitzsimmons*, 805 F.2d 682, 687 (7th Cir. 1986) ("privity between parties is established where those parties' interests are so closely aligned that they represent the same legal interests.") It is readily apparent that 24 Hour Worldwide intends to "split" its Shareholder Agreement claims from those alleged in the instant lawsuit, and thereby reserve the opportunity to later sue Defendants under the Shareholder Agreement, regardless of the outcome of the instant lawsuit.

This is the precise outcome against which Rule 19 is intended to protect. Unless 24 Hour Worldwide is joined in the instant litigation: (1) Defendants will be subject to potential inconsistent obligations relating to the same purported misconduct; and (2) another court will be forced to engage in a time-consuming, expensive, and unnecessary adjudication of causes of action that could easily be addressed in the instant action, and that can only be resolved by reference to factual determinations that must be made in the instant dispute.

2. 24 Hour USA Has Misstated The Legal Standard Concerning Res Judicata.

24 Hour USA argues that Rule 19 does not apply because Defendants will not be subject to inconsistent adjudications absent the joinder of 24 Hour Worldwide. Specifically, 24 Hour USA contends that, because the 24 Hour Plaintiffs are purportedly "in privity," the doctrine of res judicata precludes 24 Hour Worldwide from "relitigating claims that were or could have been raised" in the current action by 24 Hour USA. This misses the point entirely. Defendants invoke Rule 19 because the 24 Hour Plaintiffs have taken the position that 24 Hour Worldwide is entitled

to pursue causes of action against Defendants that arise out of the same factual allegations underlying this lawsuit, but which cannot be raised in the current action by 24 Hour USA. In other words, although 24 Hour USA and 24 Hour Worldwide may be in privity with respect to certain claims, they are not in privity with respect to all of their potential claims.

Although 24 Hour USA asserts that it is capable of adequately representing all of 24 Hour Worldwide's legal rights because it is in privity with 24 Hour USA, this is simply not true. 24 Hour USA is not a party or signatory to the Shareholder Agreement and, therefore, has no standing to sue Sheehan for the purported breach of that agreement – or by extrapolation, to sue Bally for the purported inducement of such a breach.

If 24 Hour Worldwide refiles a lawsuit relating to the Shareholder Agreement, Defendants will certainly argue that such claims should be dismissed for failure to join them in the current action. However, there is no guarantee that Defendants will prevail on this argument, or that a court hearing 24 Hour Worldwide's claims would find the doctrine of res judicata applicable. The Seventh Circuit has long recognized that “[f]or res judicata to apply, the causes of action, as well as the parties, or their privies, must be identical.” United States v. Bailey, 957 F.2d 439, 443 (7th Cir. 1992), *cert denied*, 505 U.S. 1229 (1992) (*citing Gray v. Lacke*, 885 F.2d 399, 405 (7th Cir. 1989), *cert denied*, 494 U.S. 1029 (1990)) (emphasis added and removed). Here, 24 Hour Worldwide may argue that its cause of action from breach of (or interference with) the Shareholder Agreement is distinct from the trade secret claims asserted by 24 Hour USA in the instant case and that: (1) its claims are premised on substantively different causes of action than those at issue in the current case (i.e., contract claims, rather than statutory trade secret claims); (2) its claims require a lesser evidentiary burden and standard of proof than those applicable in the current case; (3) it seeks different damages than those requested in the current case (compensatory contract damages, rather than damages and injunctive relief pursuant to the Illinois Trade Secrets Act); and (4) it was not in complete privity with 24 Hour USA.

Ultimately, to invoke Rule 19, this Court is not required to determine if the doctrine of res judicata should or should not apply if 24 Hour Worldwide refiles a separate lawsuit. Rather, it is

sufficient for this Court to find that another court “might” entertain a second lawsuit by 24 Hour Worldwide, which could lead to results inconsistent with those arrived at in this case. *See* Fed. R. Civ. Pr. 19(b) (court must consider “the extent to which a judgment rendered in the [entity’s] absence might prejudice that person or the existing parties” (emphasis added)).¹ That is certainly the case here. It is revealing that the 24 Hour Plaintiffs have made specific efforts to preserve its right to sue Defendants in a separate lawsuit based on claims arising out of the Shareholder Agreement.

In Hunt, the District Court for the Northern District of Illinois, Eastern Division considered a situation very similar to that presented here. In that case, the plaintiff alleged that the defendant had violated plaintiff’s intellectual property rights. The defendant sought to compel the joinder of a non-party under Rule 19(a) on the grounds that the non-party had an ownership interest in the intellectual property rights at issue, and therefore might later assert claims against the defendant based on the same basic conduct at issue in the plaintiff’s complaint. Just as in this case, the plaintiff objected to joinder on the grounds that: (a) it and the interested third party were, arguably, in privity; and (b) defendant could avoid inconsistent obligations by relying on res judicata/collateral estoppel. Although the District Court acknowledged that there was a distinct possibility that defendant might invoke such defenses in response to a subsequent lawsuit by an interested third party, the Court nevertheless found that joinder was appropriate because Rule 19(a)(2) requires only a showing that a party’s interests may be harmed absent joinder of an interested party. Specifically, the Court noted that “Rule 19 requires us to look beyond whether a

¹ On its face, Rule 19(a) merely requires evidence that failure to join a necessary party “might” prejudice an existing party. 24 Hour USA, however, contends that, in Davis Cos v. Emerald Casino, Inc., 268 F.3d 477, 479 (7th Cir. 2001), the Seventh Circuit held that such a risk may not be “hypothetical.” This is incorrect. In the entire text of the Davis Cos. decision the Court never once used the word “hypothetical.” Although Davis Cos. does state, in passing, that a party seeking joinder should demonstrate a “substantial” risk of prejudice, this statement is dictum, is contrary to the language of Rule 19 itself, and is contrary to more recent authority. In Hunt, 2004 U.S. Dist. LEXIS 8773, at **13-14, the Northern District, Eastern Division, held that to find that an entity is a necessary party, Rule 19(a)(2) requires only that a party’s interests “may” be harmed. In so holding, the Court specifically relied on and cited to Takeda v. Northwestern National Life Ins. Co., 765 F.2d 815, 821 (9th Cir. 1985), which states that a party must be joined even if there is only a “possibility” of prejudice absent joinder. Even if the legal standard is that of a “substantial” risk of prejudice, Defendants have easily satisfied this standard.

non-party would be technically bound [by a judgment] and to consider whether the judgment would ‘as a practical matter’ impair the non-party’s interests.” Hunt, 2004 U.S. Dist. LEXIS 8773, at *12 (quoting Casualty Indemnity Exchange v. Village of Crete, 731 F.2d 457, 461 (7th Cir. 1984)) (internal quotations omitted). Furthermore, the Court found it compelling that, even if the defendant could rely on the defense of res judicata, joinder of the non-party was necessary to ensure that defendants would not be subjected to the costs of multiple litigations relating to the same set of operative facts. Id. (“Rule 19 ‘should be employed to promote the full adjudication of disputes with a minimum of litigation effort’”)

This case presents an even more compelling basis applying Rule 19. In Hunt, the court applied Rule 19 even though the named plaintiff was not intentionally seeking to split its claims. Here, however, the 24 Hour Plaintiffs have made a strategic decision not to assert all of their potential causes of action in a single lawsuit. At any point, they could have substituted 24 Hour Worldwide as the named plaintiff in this case, instead of 24 Hour USA, so as to allow for the efficient and economical adjudication of all of the 24 Hour Plaintiffs’ claims in a single action. Instead, after naming 24 Hour Worldwide as a plaintiff in the Original Complaint, that entity was quickly dismissed. Thus, the 24 Hour Plaintiffs have created a situation where the application of Rule 19 is the only means to ensure the efficient administration of justice and avoid a substantial risk of inconsistent results.

3. 24 Hour USA Has Misstated The Applicable Legal Standard For Judging Whether An Entity Is A Necessary Party.

Citing Burger King Corp. v. American Nat’l Bank and Trust Co. of Chicago, 119 F.R.D. 672 (N.D. Ill. 1988), Plaintiffs contend that 24 Hour Worldwide cannot be a necessary party because 24 Hour Worldwide’s “only” interest in this case is a financial interest or “interest of convenience.” This is a misstatement of the law and the facts. Although Burger King supports the general proposition that an entity should not be considered a necessary party if that entity has nothing more than an incidental financial interest, 24 Hour USA has failed to cite to the remainder of the holding in Burger King in which the court specifically found that an entity does constitute a

necessary party if that entity has “a legally protected interest in the subject matter of the action.” Id. at 675 (emphasis removed). 24 Hour USA chose to edit this holding out of its citation to Burger King because 24 Hour Worldwide has, on multiple occasions, acknowledged that it has a legally protected interest in the subject matter of this litigation. This is a fact admitted by 24 Hour Worldwide in the California Action, the Original Complaint, and the FAC. In each of these pleadings, the 24 Hour Plaintiffs specifically acknowledged that 24 Hour USA and 24 Hour Worldwide have identical ownership interests in the intellectual property rights at issue in this litigation, and have both suffered damages as a result of the alleged misuse of that intellectual property.

In response, 24 Hour USA argues that the 24 Hour Plaintiffs should not be held responsible for statements made in the context of the California Action, the Original Complaint, and the FAC; and that any allegations made therein are not binding. This is disingenuous. First, as 24 Hour USA points out in its opposition brief, for purposes of this motion, the Court must assume that the allegations in the complaint(s) are true. Davis Cos., 268 F.3d at 479. Second, the affirmative allegations made in three separate complaints cannot, as 24 Hour USA contends, be considered a mere “clerical error.” The complaint in the California Action was verified, and the allegations in the Original Complaint were made subject to Rule 11. In each of these pleadings, the 24 Hour Plaintiffs have expressly alleged that each of them is the owner of the trade secrets at issue, and each has been damaged by the conduct of Defendants. (California Action, ¶¶ 8-10, 18, 19; Original Complaint 10, 11, 15, 16, 24.)

24 Hour USA has also misstated the law by erroneously suggesting that a corporate parent can never be considered a “necessary” party in litigation brought by its subsidiary. The cases 24 Hour USA relies on in this regard merely state that a parent and its subsidiary are often adequate representatives of each other’s rights – in situations where the non-party entity’s only interest in the outcome of the litigation is with respect to the overall financial condition of the party entity. Etri, Inc. v. Nippon Miniature Bearing Corp., 1989 U.S. Dist. LEXIS 10129, *12-14 (N.D. Ill. 1989); Extra Equipamentos E Exportacao Ltda, et al. v. Case Corp., 361 F.3d 359, 364 (7th Cir.

2004). These cases do not address the situation raised in the instant case, where a parent and a subsidiary have overlapping interests arising out of a common set of factual allegations, but where the subsidiary *lacks the standing* to pursue at least one cause of action on the parent's behalf. Id.

4. 24 Hour Worldwide Is Also An "Indispensable" Party.

Once an entity is deemed a necessary party under Rule 19(a), if joinder would defeat jurisdiction, the Court must consider whether that party satisfies Rule 19(b) – which formerly referred to “indispensable” parties. Fed. R. Civ. Pr. 19(b). In other words, the Court must “determine whether, in equity and good conscience, the action should proceed among the existing parties or should be dismissed.” Id. In making this decision, a District Court should apply a four-factor test: (1) the “extent to which a judgment rendered in [an entity’s] absence *might* be prejudicial to . . . the existing parties”; (2) the extent to which, by protective provisions in the judgment or other measures, the prejudice can be lessened or avoided; (3) whether a judgment rendered in the necessary party’s absence will be adequate; and (4) whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder. None of these factors are dispositive, and all must be considered. *See Burger King Corp.*, 119 F.R.D. at 679. These four factors “overlap to a large extent” with those taken into consideration when analyzing whether an entity is a necessary party. Id. Here, the same facts that support 24 Hour Worldwide’s status as a necessary party also demonstrate that 24 Hour Worldwide is an indispensable party.

First, as described above, there exists a substantial likelihood that, if 24 Hour Worldwide is not joined as a party, a judgment rendered in this case could be prejudicial to Defendants and to the public’s interest in the efficient and complete disposition of legal disputes.

Second, there are no protective provisions that can be fashioned to prevent the prejudice that will result if the 24 Hour Plaintiffs are permitted to split their claims and potentially subject Defendants to inconsistent obligations. Unless 24 Hour Worldwide is joined as a party, this Court will have no jurisdiction or mechanism by which to regulate any attempts by 24 Hour Worldwide to refile its claims relating to the Shareholder Agreement in another forum.

Third, a judgment rendered in 24 Hour Worldwide’s absence will not be adequate or

complete. Unless 24 Hour Worldwide is joined as a party, its contract-based claims against Defendants cannot be resolved except through additional and unnecessary litigation.

Fourth, even if the instant case is dismissed, the 24 Hour Plaintiffs, or any of them, will retain the right to attempt to refile their claims in another forum, assuming they determine, pursuant to their Rule 11 obligations, that it is appropriate to do so and subject to any defenses Defendants may have. The Seventh Circuit has recognized that this is an adequate alternate remedy, even though it may limit a party's attempt to benefit from a forum-shopping strategy. *See McGee v. Dresnick*, 2005 U.S. Dist. LEXIS 18244, at *11 (N.D. Ill. 2005) (finding that plaintiff will suffer no prejudice because he could attempt to pursue his claims in a state court).

All four factors support a finding that 24 Hour Worldwide is an indispensable party, and this case cannot "in equity and good conscience" proceed without 24 Hour Worldwide as a party. 24 Hour Worldwide was a party when this litigation was initiated, and was only dismissed to create subject matter jurisdiction where none existed.

III. CONCLUSION

Based upon the foregoing, Defendants respectfully submit that the Court should dismiss this case for lack of subject matter jurisdiction because 24 Hour USA and Sheehan were both citizens of California as of the date of the filing of this action. Alternatively, Defendants respectfully submit that the Court should compel the joinder of 24 Hour Worldwide and subsequently dismiss this case for lack of subject matter jurisdiction because 24 Hour Worldwide and Bally are both citizens of Delaware, and were so as of July 7.

Dated: August 21, 2008

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CERTIFICATE OF SERVICE

The undersigned, one of the attorneys for Defendants Michael Sheehan and Bally Total Fitness Holding Corporation, hereby certifies that he has caused a true and correct copy of the foregoing Reply Memorandum Of Law In Support Of Defendants' Motion To Dismiss The First Amended Complaint For Lack Of Subject Matter Jurisdiction And/Or For Failure To Join A Necessary Party to be served via the Court's ECF filing system, this 21st day of August, 2008, addressed to:

R. Mark Halligan
Mark.Halligan@lovells.com
Deanna R. Swits
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LOVELLS LLP
330 N. Wabash Avenue
Suite 1900
Chicago, IL 60611
Tel: 312-832-4400
Chicago, IL 60611

_____/s/Kimball R. Anderson_____

MICHAEL SHEEHAN, JULY 22, 2008

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1 UNITED STATES DISTRICT COURT
 2 NORTHERN DISTRICT OF ILLINOIS
 3 EASTERN DIVISION
 4 24 HOUR FITNESS USA, INC., a)
 5 California corporation,)
 6 Plaintiff,)
 7 vs.)No. 08 cv 3853
 8 BALLY TOTAL FITNESS HOLDING CORP.,)
 9 a Delaware corporation, and MICHAEL)
 10 SHEEHAN, an individual,)
 11 Defendants.)
 12

13 The deposition of MICHAEL SHEEHAN, called for
 14 examination, taken pursuant to the Federal Rules of Civil
 15 Procedure of the United States District Courts pertaining
 16 to the taking of depositions, taken before LISA SCHWAM,
 17 CSR No. 840-4650, a Notary Public within and for the
 18 County of Cook, State of Illinois, and a Certified
 19 Shorthand Reporter of said state, at Suite 1900, 333 North
 20 Wabash Street, Chicago, Illinois, commencing, on the 22nd
 21 day of July, A.D. 2008, at 1:11 p.m.
 22
 23
 24

1 (8700 West Bryn Mawr Avenue,
 2 Chicago, Illinois 60631,
 3 773-399-7626), by:
 4 MS. KATHLEEN M. BOEGE,
 5 appeared on behalf of the Defendant.
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1 PRESENT:
 2 LOVELLS LLP,
 3 (333 North Wabash Street, Suite 1900,
 4 Chicago, Illinois 60611,
 5 312-832-4400), by:
 6 MR. R. MARK HALLIGAN and
 7 MS. DEANNA R. SWITS,
 8 appeared on behalf of the Plaintiff;
 9
 10 24 HOUR FITNESS,
 11 (12647 Alcosta Boulevard, Suite 500,
 12 San Ramon, California 94583,
 13 925-543-3368), by:
 14 MS. KATHLEEN DEIBERT,
 15 appeared on behalf of the Plaintiff;
 16
 17 WINSTON & STRAWN, LLP
 18 (35 West Wacker Drive,
 19 Chicago, Illinois 60601,
 20 312-558-5858), by:
 21 MR. KIMBALL R. ANDERSON,
 22 appeared on behalf of the Defendant;
 23
 24 BALLY TOTAL FITNESS, GENERAL COUNSEL,

1 (Exhibits 1-3 marked as requested prior to
 2 commencement of deposition.)
 3 (WHEREUPON, the witness was sworn.)
 4 MICHAEL SHEEHAN,
 5 called as a witness herein, having been first duly sworn,
 6 was examined and testified as follows:
 7 MR. HALLIGAN: This is a special deposition
 8 ordered by the Court relating strictly to the
 9 issue of subject matter jurisdiction. And I don't
 10 know, Mr. Anderson, if you want to make any other
 11 statements on the record, but we're here on that
 12 sole and limited issue pursuant to agreement we
 13 reached last week.
 14 MR. ANDERSON: I would describe it this way:
 15 I don't believe the Court ordered it. I think
 16 that the Court acknowledged that we were going to
 17 try to voluntarily resolve the jurisdiction issues
 18 that I have raised. And our view, our view being
 19 that of the Defendants, is that the Federal Court
 20 has no subject matter jurisdiction, and that any
 21 orders that might have been issued would be
 22 without enforcement. But we are here today
 23 voluntarily producing Mr. Sheehan to provide
 24 information regarding the citizenship issue that

1 (Pages 1 to 4)

MICHAEL SHEEHAN, JULY 22, 2008

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1 you've identified.

2 And you are correct that the subject matter will
3 be strictly limited to the citizenship issue as of the
4 filing date of the complaint made on July 8, 2008.

5 MR. HALLIGAN: Well, I think the complaint
6 was filed on July 7th, 2008. And I think then an
7 amended complaint was filed on July 8, 2008.

8 MR. ANDERSON: Well, then I stand corrected.
9 Then the relevant date for the Court to determine
10 whether subject matter attaches is
11 July 7th, 2008.

12 MR. HALLIGAN: And I will reserve any
13 objections to the statement by counsel. And I
14 would like to start with Plaintiff's Notice of
15 Deposition of Defendant Michael Sheehan marked as
16 Deposition Exhibit 1.

17 EXAMINATION

18 BY MR. HALLIGAN:

19 Q. Mr. Sheehan, have you had an opportunity to
20 review this notice of deposition when it was served?

21 A. Yes.

22 Q. And particularly, turning to page 3, the
23 Schedule A. Page 3 and page 4.

24 A. Yes.

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1 not been answered by the witness yet, is I had asked that
2 you bring with you today a true and correct copy of any
3 document consisting of or referring to or relating to any
4 agreement of employment with Bally Total Fitness Holding
5 Corporation and/or any entity relating to Bally Total
6 Fitness Holding Corporation.

7 Can you take a look at the pile and tell me if
8 there is any documentation responsive to Request No. 1 in
9 the documents your counsel just handed to me.

10 A. Yes.

11 Q. And can you provide me with that document so we
12 can mark it with an exhibit sticker.

13 MR. HALLIGAN: Okay. We're going to mark the
14 document that the witness has identified has
15 Exhibit 4. And we'll go ahead and put an exhibit
16 sticker on this.

17 (Exhibit 4 marked as requested.)

18 BY MR. HALLIGAN:

19 Q. Okay. Handing you what you pulled out of the
20 stack and what I have marked as Exhibit 4, who did you
21 instruct to redact that document?

22 A. My counsel.

23 Q. Did you physically redact that document?

24 A. No.

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1 Q. Number 1 on Schedule A requested that you bring
2 with you today, to this deposition, a true and correct
3 copy of any document consisting of or referring to or
4 relating to your agreement of employment with Bally Total
5 Fitness Holding Corporation and/or any entity related to
6 Bally Total Fitness Holding Corporation.

7 Did you bring those documents with you?

8 MR. ANDERSON: Mr. Sheehan had directed his
9 staff to bring -- to gather responsive documents,
10 and I have here in my hand, and I am pushing them
11 across the table to you, the documents that the
12 staff has been able to obtain at this time. And
13 that does include a redacted copy of a letter of
14 employment.

15 MR. HALLIGAN: All right. Well, I'm going to
16 hand -- Let the record reflect that I just
17 received, it looks like, three stapled documents
18 and one piece of paper, which appears to be a
19 photocopy of a driver's license from California.

20 BY MR. HALLIGAN:

21 Q. So as we go through this, if the document
22 responsive to the request is in here, would you pull it
23 out for me so that I can match it up with the request.

24 And, again, the question on the floor, which has

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1 Q. Where is the unredacted document?

2 A. I'm not sure.

3 Q. Well, did you provide that to your counsel in an
4 unredacted format, and then your counsel redacted it?

5 A. Yes.

6 Q. Okay. What was the date of that document? When
7 did you receive that document?

8 A. This document is not dated.

9 Q. Well, the document -- It was dated, but somebody
10 intentionally removed the date.

11 MR. ANDERSON: Well, I don't think that's a
12 fair statement. I object to the form of the
13 question. That misstates his testimony. That's
14 just an argumentative speech.

15 MR. HALLIGAN: All right.

16 BY MR. HALLIGAN:

17 Q. Did you --

18 MR. ANDERSON: Tell him the date you received
19 the document, if you remember.

20 THE WITNESS: I don't recall the date I received this
21 document.

22 BY MR. HALLIGAN:

23 Q. You don't recall the date you received the

24 document. Well, you made your decision to join Bally at

2 (Pages 5 to 8)

MICHAEL SHEEHAN, JULY 22, 2008

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1 the end of April 2008; isn't that correct?

2 A. No.

3 Q. Then what was the date that you made your
4 decision to join Bally?

5 A. Late July -- or late June. I don't recall the
6 specific date.

7 Q. Well, you began your interviews with Bally going
8 all the way back to the early part of 2008, correct?

9 MR. ANDERSON: And what does this have to do
10 with jurisdiction?

11 MR. HALLIGAN: I'm just trying to find out
12 when his intent was to move to Chicago.

13 MR. ANDERSON: Well, you haven't established
14 anything on intent yet, and I'm not sure what the
15 question has to do in that regard.

16 But if you want to ask him about when he had his
17 first contact with Bally, if that's the question, I'll
18 allow that.

19 BY MR. HALLIGAN:

20 Q. All right. We'll go with that.

21 When was your first contact with Bally?

22 A. Sometime in 2008. I'm not sure of the exact
23 date.

24 Q. Now, when you say "sometime in 2008," it was in

Page 10

1 the early months of 2008, correct?

2 A. I can't recall the specific month.

3 Q. Well, to the best of your recollection, it was
4 January, February or March, correct?

5 A. I don't believe it was.

6 Q. You don't believe it was January, February or
7 March?

8 A. I don't believe it was January or February. It
9 could have been March or April.

10 Q. Okay. So you're saying your first contact with
11 Bally with respect to becoming the CEO of Bally was in
12 March or April? Is that your testimony?

13 A. To the best of my recollection.

14 Q. Okay. And you came to Chicago at that time?

15 A. No.

16 Q. Well, how many times did you come to Chicago?

17 A. Once.

18 Q. And when was that?

19 A. I don't recall the exact date.

20 Q. Well, was it March or April, correct?

21 A. Incorrect.

22 Q. Oh, it was incorrect.

23 Okay. So your first contact with Bally was in
24 March or April, but your actual visit to Chicago was in

1 May? Is that your testimony?

2 A. No. That's not my testimony.

3 Q. Okay. When did you come to Chicago?

4 A. I don't recall the exact date.

5 Q. Well, was it in March or April? Now you're
6 saying it was earlier than March or April that you came to
7 Chicago.

8 A. No.

9 Q. Well, if your first contact with Bally is March
10 or April, then your visit to Chicago had to be about that
11 same time, correct?

12 A. That's incorrect.

13 Q. When was your visit to Chicago?

14 A. I told you I don't recall the exact date.

15 Q. I understand you don't recall the exact date.
16 I'm trying to get you to recall the month.

17 What month did you come to Chicago?

18 A. I don't recall if it was May or June.

19 Q. Okay. So now having established that your first
20 contact with Bally was in the month of March or April,
21 your first visit to Chicago was in May or June.

22 Then when was -- Now going back to Exhibit 4,
23 when did you receive that letter?

24 A. That letter that's sitting right here

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1 (indicating)?

2 Q. Right. It's been redacted. I can't read it.

3 Most of the document's been redacted, right? You've
4 testified that that was done by your lawyers. I can't
5 tell anything about the document. Everything's been
6 redacted.

7 I'm asking you what's the date --

8 MR. ANDERSON: I ask that you stop testifying
9 about what you can and cannot tell. You can tell
10 a lot from the document that's relevant to the
11 citizenship issue. Why don't you just ask
12 questions instead of making a speech in advance of
13 them.

14 MR. HALLIGAN: I'm not making any speeches.
15 I can't determine anything. What was selected
16 there is the only thing that you want me to see,
17 and I think that we're going to have to deal with
18 that separately.

19 BY MR. HALLIGAN:

20 Q. All I'm trying to do is establish on the record
21 when you received that documentation, Exhibit 4.

22 A. This redacted copy I received today.

23 Q. No, not the redacted copy. I'm talking about
24 Exhibit 4 in its unredacted state.

3 (Pages 9 to 12)

MICHAEL SHEEHAN, JULY 22, 2008

Page 13

1 A. Late June.
 2 Q. Late June. What date did you report for work at
 3 Bally?
 4 A. July 1.
 5 Q. And what day of the week was that?
 6 A. I believe that was Tuesday.
 7 Q. You believe July 1 was a Tuesday?
 8 A. Yes.
 9 Q. Okay. When did you resign from 24 Hour
 10 Fitness?
 11 A. Late June.
 12 Q. What day did you resign from 24 Hour Fitness?
 13 A. It was a Monday. I don't recall --
 14 Q. June 23rd?
 15 A. June 23rd seems right.
 16 Q. June 23rd seems right.
 17 Okay. Looking at Exhibit 4, when is the first
 18 point in time that you saw Exhibit 4?
 19 A. I saw the redacted form --
 20 Q. Not the redacted. All these questions are --
 21 This was an unredacted document sent to your attention.
 22 And my question is: When did you receive it?
 23 When did you first see it with your eyes, Exhibit 4?
 24 MR. ANDERSON: Okay. Well, that question you

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1 asked, and he said late June.
 2 BY MR. HALLIGAN:
 3 Q. But I don't know what you mean by late June.
 4 You resigned on June 23rd from 24 Hour Fitness, a Monday.
 5 You started as the CEO of Bally on July 1st. So you have
 6 those dates.
 7 When did you first see this document marked as
 8 Exhibit 4?
 9 A. Sometime in late June.
 10 Q. After June 23, is that your testimony under
 11 oath?
 12 A. No.
 13 Q. Okay. So you saw this document before
 14 June 23rd?
 15 A. Yes.
 16 Q. Okay. So when you say late June, it's sometime
 17 before June 23rd, correct?
 18 A. Correct.
 19 Q. But you don't know whether it was June 10th or
 20 June 11th, June 12th, June 13th, June 14th, correct?
 21 A. I don't have the recollection of the specific
 22 date I first saw this.
 23 Q. But the unredacted document would have the date
 24 on it, correct?

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1 A. I don't know.
 2 Q. Well, how did you see it? How did it come into
 3 your possession, Exhibit 4?
 4 A. It was e-mailed to me.
 5 Q. By whom?
 6 A. Gene Davis.
 7 Q. Who is Gene Davis?
 8 A. A member of the board.
 9 Q. A member of the Bally board of directors?
 10 A. Yes.
 11 Q. Was anyone else copied on the e-mail?
 12 A. I don't recall.
 13 Q. And How do you know it came from Gene Davis?
 14 A. That's my recollection.
 15 Q. Now, this e-mail that gene Davis sent with
 16 Exhibit 4, were there any other documents attached to this
 17 e-mail other than Exhibit 4?
 18 A. No.
 19 Q. This was the only document, Exhibit 4,
 20 correct?
 21 A. Yes.
 22 Q. Okay. Are there any other documents in the pile
 23 that your counsel gave me that would reflect your
 24 agreement of employment with Bally Total Fitness Holding

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1 Corporation and/or any entity related to Bally Total
 2 Fitness Holding Corporation, other than what I marked as
 3 Exhibit 4?
 4 A. No.
 5 Q. Okay. All right. Now, going back to the Notice
 6 of Deposition, Number 1. Can you hand back to me Exhibit
 7 4.
 8 Number 2 says that I asked you to bring here
 9 today any -- a true and correct copy of any document
 10 consisting of, or referring or relating to, any offer of
 11 employment made to Michael Sheehan by Bally Total Fitness
 12 Holding Corporation and/or any entity related to Bally
 13 Total Fitness Holding Corporation.
 14 Did you bring those documents with you today?
 15 A. I believe so.
 16 Q. And can you look in the pile and tell me what
 17 that document is.
 18 MR. ANDERSON: Well, you took it out of his
 19 pile.
 20 By MR. HALLIGAN:
 21 Q. Oh, you're saying Exhibit 4 constitutes the
 22 offer of employment, too?
 23 Question one was the agreement of employment.
 24 Two was the offer of employment. There are different

4 (Pages 13 to 16)

MICHAEL SHEEHAN, JULY 22, 2008

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1 documents.

2 Are you saying 4 contains both the agreement of
3 employment and the offer of employment? Is that your
4 testimony?

5 A. This is the offer of employment.

6 Q. So Exhibit 4 is the offer of employment. Where
7 is the Actual employment agreement then?

8 A. There is not an employment agreement.

9 Q. You did not sign any employment agreement with
10 Bally to become their CEO?

11 A. I signed the offer of agreement, which is --
12 offer of employment -- which is the document you have
13 here.

14 Q. And where is your signature on Exhibit 4?

15 A. This document doesn't have a signature on it.

16 Q. Where did the signature go?

17 A. I believe it was sent back to Gene Davis.

18 Q. Wasn't it redacted? Look on Exhibit 4. Was
19 your signature block redacted from the document?

20 You're pointing to the very last page. I don't
21 have a copy.

22 What are you looking at on the last page? Let
23 me see. You pointed to the last page. So we have a clear
24 record, let me look at it.

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1 You gave me the page -- what is page 6 of the
2 exhibit. You see that? But your signature isn't there.
3 Where is the signed copy?

4 A. I'm not sure where the signed copy is.

5 Q. Okay. Let's go to number 3. Three was asking
6 you to bring any document consisting of, or referring to
7 or relating to, the rejection or acceptance made by
8 Michael Sheehan to any offer of employment by Bally Total
9 Fitness Holding Corporation and/or any entity related to
10 Bally Total Fitness Holding Corporation.

11 Did you bring that document with you?

12 A. Yes.

13 Q. Where is that document?

14 A. You have it.

15 Q. Oh, you're saying now Exhibit 4 is responsive to
16 three? Where is your signature showing acceptance of
17 employment on Exhibit 4?

18 A. That copy does not have a signature on it.

19 Q. Right. Well, the fact, is Mr. Sheehan, I do not
20 have any evidence here of your acceptance of the offer of
21 employment. There is no signed document that's been
22 produced, correct?

23 MR. ANDERSON: Well, you do have evidence of
24 it. He testified that he signed it.

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1 MR. HALLIGAN: I don't want you making speeches.

2 MR. ANDERSON: I object to your argument. Well,
3 You're sitting here making speeches. I'm just objecting
4 to your incorrect statements of fact.

5 MR. HALLIGAN: You're making speaking
6 objections influencing the witness's testimony. I
7 object to that. That's improper.

8 MR. ANDERSON: Go on and ask your questions.
9 If you're going to preface your questions with
10 arguments, I'm going to object.

11 MR. HALLIGAN: Well, that's fine. Just say
12 "object."

13 BY MR. HALLIGAN:

14 Q. My point is, and the question on the floor is:
15 Exhibit 4 does not have your signed signature, correct?

16 MR. ANDERSON: That's been asked and answered
17 now twice. Object.

18 BY MR. HALLIGAN:

19 Q. Correct?

20 A. Yes.

21 Q. And you don't know where the signed signature
22 is?

23 A. At this point, I don't know where it is.

24 Q. Okay. Four asks for a true and correct copy of

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1 any document consisting of, or referring or relating to,
2 the compensation benefits and/or relocation assistance
3 provided to Michael Sheehan by Bally Total Fitness Holding
4 Corporation and/or any entity related to Bally Total
5 Fitness Holding Corporation.

6 Did you bring those documents with you?

7 A. I believe they are in document 4 -- or
8 Exhibit 4.

9 Q. Okay. Show me in Exhibit 4, so we have a clear
10 record, of where you claim the compensation benefits and
11 relocation assistance is described in Exhibit 4.

12 Is it your testimony that the total extent of
13 documentation you received from Bally relating to
14 relocation assistance is set forth at pages 3 and 4 of
15 Exhibit 4?

16 MR. HALLIGAN: And I'd like to have that read
17 back so the witness clearly understands the
18 question.

19 (Record read as requested.)

20 BY THE WITNESS:

21 A. Yes.

22 BY MR. HALLIGAN:

23 Q. So looking at page 3 of Exhibit 4, your intent
24 in acceptance of the position of the CEO of Bally, was

5 (Pages 17 to 20)

MICHAEL SHEEHAN, JULY 22, 2008

Page 21	Page 23
<p>1 premised on your obligation and intent to move your 2 permanent residence to the Chicago area, as reflected at 3 page 3, correct? 4 MR. ANDERSON: Object to the form of the 5 question. Could you read it back, please. 6 (Record read as requested.) 7 BY THE WITNESS: 8 A. Can you clarify the question, please. 9 BY MR. HALLIGAN: 10 Q. Can I clarify the question? Paragraph 3 -- 11 Strike that. 12 Page 3, which you pointed out, and page 4, after 13 you had an opportunity to review it, and you testified, is 14 the only documentation that you received from Bally 15 relating to relocation. 16 We established that, correct? 17 A. The only documentation that I received. 18 Q. From Bally relating to relocation? 19 A. Yes. 20 Q. States, you agree, you being Mr. Sheehan, 21 Michael Sheehan, you agree to move your permanent 22 residence to the Chicago area. That was your agreement 23 and intent at the time you agreed and accepted the 24 position as CEO in what you now are saying was late June,</p>	<p>1 MR. ANDERSON: Object to the form of the 2 question. Assumes facts not in evidence. 3 Argumentative and unrelated to the citizenship 4 issue here. 5 MR. HALLIGAN: Well, I think we've 6 established the citizenship issue. 7 BY MR. HALLIGAN: 8 Q. I just want to confirm that you met with Carl 9 Liebert on the 23rd of June, correct? 10 A. I believe so. 11 Q. You told him you were moving to Chicago? 12 A. No. 13 Q. At that meeting, you told him that you were 14 moving to Chicago. In fact, he asked about your wife. 15 And you said she will just have to get used to the Chicago 16 weather, correct? 17 A. I don't recall that. 18 Q. You don't recall that. You told him you were 19 moving to Chicago on June 23rd when you met with him. 20 MR. ANDERSON: Well, excuse him. That's been 21 asked and answered. 22 MR. HALLIGAN: He denied it. 23 MR. ANDERSON: Do you have a different question? 24 BY MR. HALLIGAN:</p>
Page 22	Page 24
<p>1 correct? 2 A. Can you clarify the question a little bit for 3 me. 4 Q. Let's just take the words. You agreed to move 5 your permanent residence to the Chicago area. 6 You understand what that means? 7 A. Yes. 8 Q. You agreed to move your permanent residence to 9 the Chicago area when you accepted the position as CEO of 10 Bally that was predicated upon your acceptance and intent 11 to move your permanent residence to Chicago? 12 A. By July 31st, yes. 13 Q. Oh. So you're saying by July 31st. You're 14 putting that qualifier on it. 15 But your intent at the time you accepted the CEO 16 position was to move your permanent residence to Chicago, 17 correct? 18 A. On the date I accepted, yes. 19 Q. All right. Let's look at number 5. 20 And by the way -- just following up on that -- 21 when you announced your resignation suddenly without 22 notice to Carl Liebert on Monday morning, June 23rd, you 23 met with him face to face to tell him you had decided to 24 become the CEO of Bally, correct?</p>	<p>1 Q. You deny that you told Carl Liebert on June 23rd 2 that you had accepted a position at Bally and you were 3 moving to Chicago? 4 MR. ANDERSON: And, counsel, you just asked 5 exactly the same question. 6 MR. HALLIGAN: It's fine. I want to get the 7 answer. 8 MR. ANDERSON: Well, You did get an answer. 9 MR. HALLIGAN: I'm not sure we have a clear 10 answer. 11 MR. ANDERSON: It's very clear to me. He 12 said he didn't recall saying that. 13 MR. HALLIGAN: That's not what he said. He 14 denied it. 15 BY MR. HALLIGAN: 16 Q. I want you to deny it. 17 You did not tell Carl Liebert -- I don't want 18 any of this not recollection stuff. 19 Did you tell Carl Liebert when you met with him 20 on June 23rd -- When you announced you were resigning, you 21 told him you were moving to Chicago, correct? 22 MR. ANDERSON: Counsel, it doesn't matter 23 what you want or don't want. What matters is he 24 is telling -- He is going to give you a truthful</p>

6 (Pages 21 to 24)

MICHAEL SHEEHAN, JULY 22, 2008

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1 answer.
 2 MR. HALLIGAN: I want a truthful answer.
 3 MR. ANDERSON: You're berating him.
 4 MR. HALLIGAN: I'm not berating him. You're
 5 interrupting the deposition.
 6 THE REPORTER: One at a time, please.
 7 MR. ANDERSON: And I am going one at a time. Counsel
 8 keeps interrupting me.
 9 MR. HALLIGAN: You're making speaking
 10 objections which are improper. Simple question.
 11 I'm going to get the answer.
 12 MR. ANDERSON: Can I finish my remarks before
 13 you interrupt me again?
 14 MR. HALLIGAN: No. Honestly, I mean, all you
 15 have to do is object, right?
 16 MR. ANDERSON: So you're just going to keep
 17 interrupting me?
 18 MR. HALLIGAN: No. I mean, If you really
 19 want to say something more, go ahead.
 20 MR. ANDERSON: I do want to say something.
 21 MR. HALLIGAN: Go ahead.
 22 MR. ANDERSON: I want to say that your
 23 argument and speechmaking on the record is
 24 improper, and I object to it. He has answered

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1 your question now, the same question, twice. And
 2 every time I attempt to object, you then interrupt
 3 me.
 4 I'm going to ask you if you could possibly just
 5 ask the questions and refrain from speechmaking and
 6 argument.
 7 MR. HALLIGAN: All right.
 8 BY MR. HALLIGAN:
 9 Q. Do you deny under oath that you told Carl
 10 Liebert you were moving to Chicago at the time you met
 11 with him to announce your resignation on June 23rd?
 12 MR. ANDERSON: Objection, asked and
 13 answered.
 14 BY THE WITNESS:
 15 A. I do not recall ever saying that.
 16 BY MR. HALLIGAN:
 17 Q. You don't recall ever saying that.
 18 Okay. Let's go to Number 5. Five was a true
 19 and correct copy of any document consisting of, or
 20 referring or relating to, any agreement for the purchase
 21 of any real property from Michael Sheehan by Bally Total
 22 Fitness Holding Corporation, any entity related to Bally
 23 Total Fitness Holding Corporation and/or any agent or
 24 other entity acting on behalf of any Bally entity.

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1 Did you bring that documentation with you
 2 today?
 3 A. I believe it's in document -- the document
 4 you're holding.
 5 Q. Exhibit 4?
 6 A. Exhibit 4.
 7 Q. Show me in Exhibit 4 what page you believe is
 8 responsive to that Request No. 5.
 9 Okay. You're pointing me to page 3. Is it
 10 any -- Strike that.
 11 Is there any other part of the document that
 12 addresses this Request No. 5, other than page 3?
 13 A. I think page 3 is all of it.
 14 Q. You own two residences in California, correct?
 15 A. No.
 16 Q. How many residences do you own?
 17 A. One.
 18 Q. All right. And where is that residence
 19 located?
 20 A. San Ramon.
 21 Q. So this is referring to the San Francisco area
 22 residence, that's the San Ramon residence?
 23 A. Yes.
 24 Q. You sold your other home which was in Newport

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1 Beach?
 2 A. Yes.
 3 Q. When was that sold?
 4 A. I believe February. January or February.
 5 Q. January or February of 2008?
 6 A. Yes.
 7 Q. Now, we've established you reported for work in
 8 Chicago on July 1st as the CEO of Bally. When did you
 9 physically arrive in the state of Illinois or Chicago?
 10 A. The evening before.
 11 Q. What day of the week was that?
 12 A. I believe it was Monday evening.
 13 Q. So Monday evening, June 30th, you arrived
 14 physically in the Chicago area. Did you land at O'Hare
 15 airport?
 16 A. Yes.
 17 Q. Did you take a commercial airline flight?
 18 A. Yes.
 19 Q. What airline?
 20 A. I don't recall.
 21 Q. You don't recall if it was American Airlines or
 22 United? You have no recollection of the plane you took?
 23 A. At this point I don't recall which airline it
 24 was.

7 (Pages 25 to 28)

MICHAEL SHEEHAN, JULY 22, 2008

Page 29	Page 31
<p>1 Q. You have travel records that would reflect</p> <p>2 that?</p> <p>3 A. I believe so.</p> <p>4 Q. Did You turn in your expense reports to Bally</p> <p>5 for that trip?</p> <p>6 A. If there were expense -- If there were</p> <p>7 out-of-pocket expenses, yes.</p> <p>8 Q. Well, wasn't there out-of-pocket expenses to fly</p> <p>9 from California to Chicago and to arrive on the evening of</p> <p>10 June 30th? Those were expenses, correct?</p> <p>11 A. I'm not sure they were out-of-pocket expenses.</p> <p>12 Q. If they weren't out-of-pocket expenses, who paid</p> <p>13 for it?</p> <p>14 A. Bally.</p> <p>15 Q. All right. Had Bally paid for other trips to</p> <p>16 Chicago before that trip?</p> <p>17 A. Not that I'm aware of.</p> <p>18 Q. Well, what about that one time you came to</p> <p>19 Chicago before? Did Bally pay for that trip?</p> <p>20 A. I don't know who paid for that.</p> <p>21 Q. Well, when you say you don't know who paid for</p> <p>22 that, are you saying that 24 Hour Fitness paid for that</p> <p>23 previous trip to Bally or may have paid for it?</p> <p>24 A. No.</p>	<p>1 Did anybody else come with you?</p> <p>2 A. No.</p> <p>3 Q. No one from your family?</p> <p>4 A. No.</p> <p>5 Q. Where did you stay after you arrived at the</p> <p>6 airport?</p> <p>7 A. I believe it's called -- a Sheraton hotel.</p> <p>8 Q. Sheraton hotel located where?</p> <p>9 A. Very close to the Bally headquarters. I'm not</p> <p>10 sure the address or city it is in.</p> <p>11 Q. And you stayed there the evening of the 30th of</p> <p>12 June?</p> <p>13 A. Correct.</p> <p>14 Q. And how many other nights did you stay there</p> <p>15 other than the 30th of June?</p> <p>16 A. Can you clarify the time frame you're referring</p> <p>17 to.</p> <p>18 Q. Well, Mr. Sheehan, it's Monday night. You've</p> <p>19 arrived in Chicago. You're to report for work as the CEO</p> <p>20 of Bally on Tuesday, July 1st.</p> <p>21 You arrive in the airport, I assume, in the</p> <p>22 evening on June 30th by your testimony, correct?</p> <p>23 A. Correct.</p> <p>24 Q. You need to have a place to sleep. You're now</p>
Page 30	Page 32
<p>1 Q. Well, then, who paid for it if it wasn't Bally?</p> <p>2 MR. ANDERSON: Counsel, he has answered the</p> <p>3 question three times now. And furthermore, I</p> <p>4 haven't a clue what this has to do with the</p> <p>5 citizenship issue. And until you explain to me,</p> <p>6 I'm not going to allow you to ask the question a</p> <p>7 fourth time.</p> <p>8 BY MR. HALLIGAN:</p> <p>9 Q. Well, let's just keep it you're in Chicago on</p> <p>10 June 30th because this is a special deposition. I'll have</p> <p>11 the opportunity to take your deposition again in this</p> <p>12 litigation.</p> <p>13 We'll --</p> <p>14 MR. ANDERSON: Maybe, maybe not. Why don't</p> <p>15 you just stick with the questions within the</p> <p>16 subject matter today.</p> <p>17 MR. HALLIGAN: I think I'm within the subject</p> <p>18 matter. I'm testing the credibility and demeanor</p> <p>19 and memory of this witness, and I'm entitled to do</p> <p>20 that, Counsel.</p> <p>21 BY MR. HALLIGAN:</p> <p>22 Q. Okay. Let's just take this back. You're in</p> <p>23 Chicago now on June 30th. And it's a Monday night.</p> <p>24 You've arrived on a commercial airliner from California.</p>	<p>1 in Chicago, in Illinois. I've established you stayed at</p> <p>2 the Sheraton hotel that's close to the corporate</p> <p>3 headquarters of Bally.</p> <p>4 Okay. My next question is: How many other</p> <p>5 nights did you stay at the Sheraton once you were here on</p> <p>6 the 30th of June? Did you stay there, for example, on the</p> <p>7 night of July 1st?</p> <p>8 A. Yes.</p> <p>9 Q. Did you stay there the night of July 2nd?</p> <p>10 A. Yes.</p> <p>11 Q. You stay there the night of July 3rd?</p> <p>12 A. No.</p> <p>13 Q. Where did you stay on the night of July 3rd?</p> <p>14 A. At my home in California.</p> <p>15 Q. Well, you had to fly back to California,</p> <p>16 right?</p> <p>17 A. Correct.</p> <p>18 Q. Okay. So when did you leave to go back to</p> <p>19 California?</p> <p>20 A. July 3rd.</p> <p>21 Q. At what time on July 3rd?</p> <p>22 A. I don't recall.</p> <p>23 Q. At the end of the day? At night? After your</p> <p>24 workday?</p>

8 (Pages 29 to 32)

MICHAEL SHEEHAN, JULY 22, 2008

Page 33

1 A. Yes. After my workday.
 2 Q. Okay. So it would have been in the evening.
 3 You flew back to California on the evening of July 3rd,
 4 correct?
 5 A. Early evening, yes.
 6 Q. All right. So when did you return to Chicago?
 7 Your counsel's pointing to a document and showing his
 8 finger.
 9 Look, just -- I ask that you just answer the
 10 questions I'm asking, okay?
 11 MR. ANDERSON: Okay. He's got the itinerary
 12 in front of him.
 13 MR. HALLIGAN: I'm testing his demeanor and
 14 credibility and his recollection.
 15 MR. ANDERSON: Oh, for Pete's sake, you're
 16 just wasting time. You've got the itinerary right
 17 in front of you.
 18 MR. HALLIGAN: I don't have any itinerary.
 19 BY MR. HALLIGAN:
 20 Q. Put that document aside and just answer my
 21 questions. We'll come back to the document.
 22 When did you return to Chicago from
 23 California?
 24 A. Late Monday evening.

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1 Q. And when you arrived on Monday evening, where
 2 did you stay?
 3 A. At the same hotel.
 4 Q. The Sheraton hotel.
 5 A. I believe that's what it's called.
 6 Q. So when you say late Monday evening, it's
 7 July 7, correct?
 8 A. Yes.
 9 Q. Okay. And on July 8 -- did you go into the
 10 corporate headquarters of Bally at any time on July 7th?
 11 A. No.
 12 Q. Okay. On July 8 you reported for work as the
 13 CEO?
 14 A. Yes.
 15 Q. And where did you stay on the evening of
 16 July 8?
 17 A. At the same hotel, which is actually called the
 18 Renaissance -- That's a correction. Not the Sheraton.
 19 Q. Getting a chance to look at this documentation
 20 now, you know it was a Renaissance hotel close to the
 21 Bally corporate headquarters?
 22 A. No. Just recalling that Sheraton didn't seem
 23 right.
 24 Q. But my point is, the hotel you stayed at, we've

Page 35

1 established is the same hotel?
 2 A. Correct.
 3 Q. And it's close to the Bally headquarters?
 4 A. That's correct.
 5 Q. Where you work?
 6 A. That is correct.
 7 Q. But now you believe the name of the hotel is a
 8 Renaissance hotel, as opposed to a Sheraton hotel,
 9 correct?
 10 A. Yes.
 11 Q. That's after looking at this document your
 12 counsel put in front of you, correct?
 13 MR. ANDERSON: I didn't put it in front of
 14 him.
 15 MR. HALLIGAN: I don't have the document in front of
 16 me. I'm trying to ask the questions of the witness.
 17 We'll get back to whatever else is in that pile.
 18 I only have one set of it. I haven't marked it
 19 as an exhibit yet. Haven't looked at it.
 20 BY MR. HALLIGAN:
 21 Q. I'm just trying to find out where you were
 22 physically staying in Illinois and the point is that you
 23 now say it's the Renaissance.
 24 MR. HALLIGAN: In fact, let's just mark this document

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1 because -- since you're going to continue to point to it.
 2 Let me just get it marked.
 3 MR. ANDERSON: Counsel, there you go again,
 4 you interrupted me mid-sentence. I think it's
 5 professionally rude and, frankly, incompetent for
 6 you to keep interrupting me.
 7 It is the same document he produced to you at
 8 the outset of the deposition. And I would appreciate it
 9 if you would stop interrupting me mid-sentence.
 10 MR. HALLIGAN: Well, the record will reflect
 11 I'm not interrupting you. You talk, you stop, and
 12 then you indicate you're still making a speaking
 13 objection, which I think is improper.
 14 But my point is that the only document that's
 15 been marked is Exhibit 4. And the document that you gave
 16 to the witness, and the witness put in front of him, I
 17 believe, is a separate document. And I'd like to mark it
 18 as an exhibit now.
 19 He has the only copy? How did it get over
 20 there?
 21 MR. ANDERSON: The fact is your recollection
 22 is incorrect. He handed you all these documents.
 23 You then shoved them back in front of him when
 24 he -- as you began asking questions about it.

9 (Pages 33 to 36)

MICHAEL SHEEHAN, JULY 22, 2008

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1 MR. HALLIGAN: I didn't shove it back in
2 front of him. I gave it to him so he could select
3 a document responsive to a document request.
4 In any event, let's mark as Exhibit 5 another
5 document. We'll get some foundation on it.
6 (Exhibit 5 marked as requested.)
7 BY MR. HALLIGAN:
8 Q. Okay. Handing you what now has been marked for
9 purposes of identification as Sheehan Exhibit 5 is an
10 e-mail communication that came from the Gant Travel
11 Management at ganttravel.com.
12 And it shows at the bottom of the first page of
13 this exhibit that the hotel where you stayed on the
14 evening of June 30, 2008, is the Renaissance O'Hare
15 located at 8500 West Bryn Mawr Avenue, Chicago, Illinois,
16 60631, which is close to the Bally headquarters.
17 This is a confirmation of the hotel that, in
18 fact, you did stay at, correct?
19 A. Yes.
20 Q. All right. Now, you came back in the evening on
21 July 7. And it's your testimony you stayed at this same
22 hotel again, correct, and reported for work on July 8th as
23 the CEO of Bally, correct?
24 A. Yes.

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1 Q. And that evening on Tuesday, the 8th, you stayed
2 again at the Renaissance hotel?
3 A. Yes.
4 Q. Okay. Wednesday, July 9th, where did you
5 stay?
6 A. At the Renaissance.
7 Q. Thursday, July 10th, where did you stay?
8 A. At the Renaissance.
9 Q. Okay. So that Friday, July -- Let's see.
10 Thursday is the 10th.
11 So Friday, July 11th, where did you stay?
12 A. At home in California.
13 Q. So you left on Friday in the evening -- on
14 Friday evening and returned to California?
15 A. Yes. I believe it was the evening.
16 Q. In other words, you worked all day at Bally on
17 the 11th, and then in the evening you returned to
18 California on Friday, the 11th? Is that your testimony?
19 MR. ANDERSON: Object to the form of the
20 question. His testimony is what it was. It's not
21 proper to be asking him what his testimony is.
22 BY MR. HALLIGAN:
23 Q. I'm trying to confirm when you left for
24 California on the 11th.

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1 Was it after the workday?
2 A. I believe I left around 4 o'clock -- left the
3 office around 4 o'clock.
4 Q. And headed to O'Hare Airport to return to
5 California on a commercial flight?
6 A. Yes.
7 Q. And then when did you return to Chicago?
8 I noticed you're looking at Exhibit 5. Does
9 that help answer the question.
10 A. It doesn't because it doesn't have my travel
11 itinerary on that date.
12 Q. I assume that travel agency would have your
13 itinerary for that date?
14 A. Yes.
15 MR. ANDERSON: Object to the form of the
16 question.
17 BY MR. HALLIGAN:
18 Q. The question is: When did you return from
19 California? Was it Sunday, July 13th?
20 A. I don't recall if it was Sunday or Monday.
21 Q. Well, do you recall when you reported for work
22 on Monday, the 14th?
23 A. I don't recall if it was early afternoon or if
24 it was Monday morning on the 13th.

Page 40

1 Q. Okay. So if it was Monday morning, that would
2 mean you came in late on the 13th. If it was Monday
3 afternoon, that means you came in on the morning from
4 California.
5 A. That's correct.
6 Q. So the evening of the 14th, where did you
7 stay?
8 A. At the Renaissance.
9 Q. Okay. Tuesday, the 15th, you report to work as
10 the CEO of Bally at their corporate headquarters?
11 A. Yes.
12 Q. And where did you stay on the evening of the
13 15th?
14 A. At the Renaissance.
15 Q. On Wednesday, July 16th, you report as the CEO
16 of Bally -- report for work?
17 A. Yes.
18 Q. And where did you stay on the evening of the
19 16th?
20 A. At the Renaissance.
21 Q. On Thursday, July 17, you reported to work as
22 the CEO of Bally?
23 A. Yes.
24 Q. And where did you stay the evening of the

10 (Pages 37 to 40)

MICHAEL SHEEHAN, JULY 22, 2008

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1 17th?
 2 A. At my home in California.
 3 Q. Okay. So when did you go back to California?
 4 On the evening of the 17th after work?
 5 A. I believe it was around 4 o'clock.
 6 Q. All right. And when did you return to
 7 Chicago?
 8 A. Monday afternoon.
 9 Q. July 21st?
 10 A. Yes.
 11 Q. And did you go into work at Bally when you
 12 returned on Monday, July 21st?
 13 A. Yes.
 14 Q. And today is July 22nd. Did you report to work
 15 at Bally this morning?
 16 A. Yes.
 17 Q. Have you stayed at any other location other than
 18 the Renaissance hotel in Chicago, Illinois, since
 19 June 30?
 20 A. No.
 21 Q. And where are you staying tonight?
 22 A. At the Renaissance.
 23 Q. And these expenses at the Renaissance, all of
 24 these expenses have been paid by Bally?

Page 42

1 A. Yes.
 2 Q. All right. Can I see the rest of the documents
 3 here. We've marked two of them.
 4 MR. HALLIGAN: Okay. I'd like to mark the
 5 following document as Exhibit 6.
 6 (Exhibit 6 marked as requested.)
 7 BY MR. HALLIGAN:
 8 Q. Who is Mary Raimondi, R-a-i-m-o-n-d-i?
 9 A. My admin assistant.
 10 Q. At Bally?
 11 A. Yes.
 12 Q. Do you have any other administrative assistants
 13 other than Mary Raimondi?
 14 A. No.
 15 Q. Exhibit 6 has 2007 dates on there at the top.
 16 That obviously should be 2008, correct?
 17 A. That is correct.
 18 Q. And is that your signature on that document, the
 19 bottom?
 20 A. Yes.
 21 Q. All those expenses have been reimbursed by
 22 Bally?
 23 A. I'm not sure they've been reimbursed. I'm
 24 assuming they will be.

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1 Q. But you signed the document and turned it in for
 2 reimbursement?
 3 A. Yes.
 4 Q. All right. Can I borrow that back a second.
 5 I want to hand you what I've previously marked
 6 as Exhibit 3.
 7 Exhibit 3 is a press release entitled "Bally
 8 Total Fitness Announces New Chief Executive Officer,"
 9 which was downloaded from the Internet.
 10 Do you see that?
 11 A. Yes.
 12 Q. This is a copy of it. It was posted on the 24th
 13 of June. Tuesday, June 24. The dateline is Chicago,
 14 Bally, CEO Sheehan. Do you see that on the PRNewswire?
 15 And it says, "Bally Total Fitness Holding
 16 Corporation today" -- meaning June 24 -- "announced that
 17 it has appointed Michael Sheehan to serve as its chief
 18 executive officer effective July 1."
 19 Is that a true statement?
 20 A. Yes.
 21 Q. The next sentence says, "Mr. Sheehan will also
 22 serve as a member of Bally's board of directors."
 23 Was that a true statement as of June 24?
 24 MR. ANDERSON: Excuse me, Counsel. What does

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1 this have to do with citizenship?
 2 MR. HALLIGAN: Shows his intent to move to
 3 Chicago. His intent to be in Chicago.
 4 MR. ANDERSON: Doesn't say anything about
 5 that.
 6 MR. HALLIGAN: Okay.
 7 MR. ANDERSON: Doesn't have a word about
 8 where --
 9 MR. HALLIGAN: That's what the Court's going
 10 to have to determine.
 11 MR. ANDERSON: You're going to have to
 12 persuade me that this is relevant to citizenship
 13 and not some other, you know, liability purpose.
 14 It seems to me clearly the latter.
 15 MR. HALLIGAN: Well, if you're going to
 16 instruct the witness not to answer, and the
 17 question is: Mr. Sheehan will also serve as a
 18 member of Bally's board of directors, and that was
 19 announced on June 24. Is that a true statement?
 20 MR. ANDERSON: And my question to you is:
 21 What does that have to do with where he has his
 22 citizenship?
 23 MR. HALLIGAN: It establishes his intent,
 24 which is what the whole purpose of this deposition

11 (Pages 41 to 44)

MICHAEL SHEEHAN, JULY 22, 2008

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1 is.
 2 MR. ANDERSON: That may be your purpose, but
 3 I don't see how that remotely goes to his intent
 4 to be a citizen one way or the other, whether he
 5 is going to be a member of a board of directors.
 6 MR. HALLIGAN: Look, if you want to instruct
 7 the witness not to answer. The question remains.
 8 I've asked him if the sentence, "Mr. Sheehan will
 9 also serve as a member of the Bally board of
 10 directors, the announcement on June 24," was that
 11 a true statement, yes or no?
 12 MR. ANDERSON: I'll allow him to answer that.
 13 I really don't -- I think you're going beyond the
 14 boundaries of the agreed scope of this deposition.
 15 BY THE WITNESS:
 16 A. Yes.
 17 MR. HALLIGAN: Okay. I want to take a short
 18 break here, and we'll be right back.
 19 (Recess was taken from 2:17 p.m. until
 20 2:29 p.m.)
 21 MR. HALLIGAN: All right. So we took a short break
 22 to get the signed signature page. Do we have that now?
 23 MR. ANDERSON: Yes. I walked across the
 24 street to my office and located the page -- the

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1 signature page. It appears that the paralegal
 2 made a mistake and redacted the signature.
 3 But I now have it here. It's also dated, and
 4 I'll tender you now the signature page.
 5 MR. HALLIGAN: Okay. So let's make this
 6 Exhibit 4-A. It is now the signed page 6.
 7 (Exhibit 4-A marked as requested.)
 8 BY MR. HALLIGAN:
 9 Q. I'm handing you, Mr. Sheehan, what I have marked
 10 as Exhibit 4-A. Is that a true and correct copy of your
 11 signature on Exhibit 4-A?
 12 A. Yes.
 13 Q. And June 20, 2008, is the date upon which you
 14 accepted the conditions of employment to become the CEO of
 15 Bally?
 16 A. No.
 17 Q. Well, it's dated June 20.
 18 A. Yes.
 19 Q. So when you signed it dated June 20, were you
 20 accepting employment as the CEO of Bally on that date?
 21 A. No.
 22 Q. Well, it says, "Accepted this 20th day of
 23 June 2008."
 24 Can you state for the record what was accepted

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1 on that date.
 2 MR. ANDERSON: Object to the form of the
 3 question.
 4 BY THE WITNESS:
 5 A. That's the date I wrote in, the 20th.
 6 BY MR. HALLIGAN:
 7 Q. No. You say it says, "Accepted this blank day
 8 of June 2008?"
 9 Do you see that?
 10 A. Yes.
 11 Q. And you signed "Michael Sheehan," correct?
 12 A. Yes.
 13 Q. What did you accept on June 20, 2008?
 14 A. The agreement.
 15 MR. HALLIGAN: Thank you. I have no further
 16 questions. That concludes the deposition.
 17 MR. ANDERSON: Signature is reserved.
 18 You have the right to review the transcript and
 19 to make sure that the court reporter has accurately
 20 transcribed everything and to make sure that you actively
 21 spoke. And she will provide you with an errata page. If
 22 you see a mistake, you can submit an errata. And if
 23 everything is okay, you can sign it.
 24 So that will all be coming to you soon in due

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1 course.
 2 (Proceedings adjourned at 2:48 p.m.)
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12 (Pages 45 to 48)

MICHAEL SHEEHAN, JULY 22, 2008

Page 49		Page 51	
1	IN THE UNITED STATES DISTRICT COURT	1	day of July, 2008.
2	NORTHERN DISTRICT OF ILLINOIS	2	
3	EASTERN DIVISION	3	
4	24 HOUR FITNESS USA, INC., a)	4	Notary Public, Cook
5	California corporation,)	5	County, Illinois.
6	Plaintiff,)	6	My commission expires July 9, 2011
7	vs.)No. 08 cv 3853	7	
8	BALLY TOTAL FITNESS HOLDING CORP.,)	8	CSR No. 84-004650
9	a Delaware corporation, and MICHAEL)	9	
10	SHEEHAN, an individual,)	10	
11	Defendants.)	11	
12		12	
13	I hereby certify that I have read the foregoing	13	
14	transcript of my deposition given at the time and place	14	
15	aforesaid, consisting of Pages 1 to 48, inclusive, and I	15	WITNESS
16	do again subscribe and make oath that the same is a true,	16	MICHAEL SHEEHAN
17	correct, and complete transcript of my deposition so given	17	By Mr. Halligan
18	as aforesaid, and includes changes, if any, so made by me.	18	
19		19	
20	MICHAEL SHEEHAN	20	
21	SUBSCRIBED AND SWORN TO	21	
22	before me this day	22	
23	of , A.D. 2008.	23	
24	Notary Public	24	
Page 50		Page 52	
1	STATE OF ILLINOIS)	1	No. 4
2) SS:	2	No. 4-A
3	COUNTY OF COOK)	3	No. 5
4	I, Lisa S. Schwam, a Notary Public within and	4	No. 6
5	for the County of Cook, State of Illinois, and a	5	
6	Certified Shorthand Reporter, Registered Professional	6	
7	Reporter, and Certified Realtime Reporter, do hereby	7	
8	certify:	8	
9	That previous to the commencement of the examination	9	
10	of the witness, the witness was duly sworn to testify the	10	
11	whole truth concerning the matters herein;	11	
12	That the foregoing deposition transcript was reported	12	
13	stenographically by me, was thereafter reduced to	13	
14	typewriting under my personal direction and constitutes a	14	
15	true record of the testimony given and the proceedings	15	
16	had;	16	
17	That the said deposition was taken before me at the	17	
18	time and place specified;	18	
19	That I am not a relative or employee or attorney or	19	
20	counsel, nor a relative or employee of such attorney or	20	
21	counsel for any of the parties hereto, nor interested	21	
22	directly or indirectly in the outcome of this action.	22	
23	IN WITNESS THEREOF, I do hereunto set my hand and	23	
24	affix my seal of office at Chicago, Illinois, this 23rd	24	

13 (Pages 49 to 52)

MICHAEL SHEEHAN, JULY 22, 2008

1 day of July, 2008.

2
3 *Russ Schuam*

4 Notary Public, Cook

5 County, Illinois.

6 My commission expires July 9, 2011

7
8 CSR No. 84-004650

9
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14 I N D E X

15 WITNESS

EXAMINATION

16 MICHAEL SHEEHAN

17 By Mr. Halligan

5

18
19 E X H I B I T S

20 NUMBER

PAGE

21 Michael Sheehan Deposition Exhibits

22 No. 1

4

23 No. 2

4

24 No. 3

4

MICHAEL SHEEHAN, JULY 22, 2008

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No. 4

No. 4-A

No. 5

No. 6

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Ex. 1

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

24 HOUR FITNESS USA, INC., a California
corporation,

Plaintiff,

v.

BALLY TOTAL FITNESS HOLDING
CORP., a Delaware corporation, and
MICHAEL SHEEHAN, an individual,

Defendants.

Civil Action No. 08 cv 3853

Judge Joan Humphrey Lefkow

Magistrate Judge Morton Denlow

PLAINTIFF'S NOTICE OF DEPOSITION OF DEFENDANT MICHAEL SHEEHAN

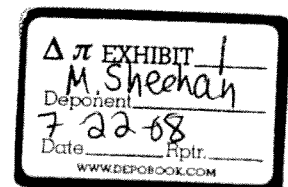
Plaintiff, 24 Hour Fitness USA, Inc. ("Plaintiff"), by and through its attorneys, hereby provides notice that commencing at **10:00 a.m. on July 17, 2008**, at the offices of Lovells LLP, 330 N. Wabash Ave., Chicago, IL 60611, Plaintiff will take the deposition of **MICHAEL SHEEHAN** pursuant to Rule 30 of the Federal Rules of Civil Procedure. The deposition will be taken upon oral examination before an official authorized by law to administer oaths and will continue from day to day until completed. Deponent is hereby requested to produce, prior to or at the commencement of the deposition, the documents listed on attached Schedule A. Pursuant to Rule 30(b)(2), testimony of the witness(es) may be recorded by both stenographic means and sound-and-visual means.

Dated: July 15, 2008

Respectfully submitted,

/s/ R. Mark Halligan

R. Mark Halligan (IL 6200723)
mark.halligan@lovells.com
Deanna R. Swits (IL 6287513)



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Suite 1900

Chicago, IL 60611

Tel: 312 832 4400

Fax: 312 832 4444

*Attorneys for Plaintiff 24 Hour Fitness USA,
Inc.*

SCHEDULE A

1. A true and correct copy of any document consisting of, or referring or relating to, any agreement of employment between Michael Sheehan and Bally Total Fitness Holding Corporation and/or any entity related to Bally Total Fitness Holding Corporation.
2. A true and correct copy of any document consisting of, or referring or relating to, any offer of employment made to Michael Sheehan by Bally Total Fitness Holding Corporation and/or any entity related to Bally Total Fitness Holding Corporation.
3. A true and correct copy of any document consisting of, or referring or relating to, the rejection or acceptance made by Michael Sheehan to any offer of employment by Bally Total Fitness Holding Corporation and/or any entity related to Bally Total Fitness Holding Corporation.
4. A true and correct copy of any document consisting of, or referring or relating to, the compensation, benefits, and/or relocation assistance provided to Michael Sheehan by Bally Total Fitness Holding Corporation and/or any entity related to Bally Total Fitness Holding Corporation.
5. A true and correct copy of any document consisting of, or referring or relating to, any agreement for the purchase of any real property from Michael Sheehan by Bally Total Fitness Holding Corporation, any entity related to Bally Total Fitness Holding Corporation, and/or any agent or other entity acting on behalf of any Bally entity.
6. A true and correct copy of any document consisting of, or referring or relating to, any housing or other accommodations obtained for or utilized by Michael Sheehan since June 24, 2008.
7. A true and correct copy of any document consisting of, or referring or relating to, any monetary expenditures made by, or on behalf of, Michael Sheehan since June 24, 2008.

including, but not limited to, bank and credit card statements, receipts, invoices, and/or any other confirmation of purchase.

8. A true and correct copy of any document consisting of, or referring or relating to, any travel arrangements made for or utilized by Michael Sheehan since June 24, 2008.

9. A true and correct copy of any document, from January 1, 2008 to the present, referring or relating to the intent of Michael Sheehan to remain a citizen of California or to become a citizen of Illinois and/or the intent of Bally Total Fitness Holding Corporation and/or any entity related to Bally Total Fitness Holding Corporation for Michael Sheehan to become a citizen of Illinois.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing NOTICE OF DEPOSITION OF DEFENDANT MICHAEL SHEEHAN was served on the below counsel by email and hand delivery on July 15, 2008:

Kimball R. Anderson
Cardelle B. Spangler
Amanda C. Wiley
Winston & Strawn LLP
35 W. Wacker Drive
Chicago, Illinois 60601
kanderson@winston.com
cspangler@winston.com
awiley@winston.com

By: /s/ Deanna R. Swits
An attorney for Plaintiff 24 Hour Fitness USA, Inc.

En 2

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

24 HOUR FITNESS USA, INC., a California
corporation,

Plaintiff,

v.

BALLY TOTAL FITNESS HOLDING
CORP., a Delaware corporation, and
MICHAEL SHEEHAN, an individual,

Defendants.

Civil Action No. 08 cv 3853

Judge Joan Humphrey Lefkow

Magistrate Judge Morton Denlow

**PLAINTIFF'S AMENDED NOTICE OF DEPOSITION
OF DEFENDANT MICHAEL SHEEHAN**

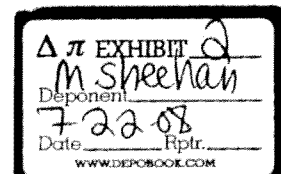
Plaintiff, 24 Hour Fitness USA, Inc. ("Plaintiff"), by and through its attorneys, hereby provides notice that commencing at **1:30 p.m. on July 22, 2008**, at the offices of Lovells LLP, 330 N. Wabash Ave., Chicago, IL 60611, Plaintiff will take the deposition of **MICHAEL SHEEHAN** pursuant to Rule 30 of the Federal Rules of Civil Procedure. The deposition will be taken upon oral examination before an official authorized by law to administer oaths and will continue from day to day until completed. Deponent is hereby requested to produce, prior to or at the commencement of the deposition, the documents listed on attached Schedule A. Pursuant to Rule 30(b)(2), testimony of the witness(es) may be recorded by both stenographic means and sound-and-visual means.

Dated: July 17, 2008

Respectfully submitted,

/s/ R. Mark Halligan

R. Mark Halligan (IL 6200723)



mark.halligan@lovells.com

Deanna R. Swits (IL 6287513)

deanna.swits@lovells.com

LOVELLS LLP

330 N. Wabash Avenue

Suite 1900

Chicago, IL 60611

Tel: 312 832 4400

Fax: 312 832 4444

*Attorneys for Plaintiff 24 Hour Fitness USA,
Inc.*

SCHEDULE A

1. A true and correct copy of any document consisting of, or referring or relating to, any agreement of employment between Michael Sheehan and Bally Total Fitness Holding Corporation and/or any entity related to Bally Total Fitness Holding Corporation.
2. A true and correct copy of any document consisting of, or referring or relating to, any offer of employment made to Michael Sheehan by Bally Total Fitness Holding Corporation and/or any entity related to Bally Total Fitness Holding Corporation.
3. A true and correct copy of any document consisting of, or referring or relating to, the rejection or acceptance made by Michael Sheehan to any offer of employment by Bally Total Fitness Holding Corporation and/or any entity related to Bally Total Fitness Holding Corporation.
4. A true and correct copy of any document consisting of, or referring or relating to, the compensation, benefits, and/or relocation assistance provided to Michael Sheehan by Bally Total Fitness Holding Corporation and/or any entity related to Bally Total Fitness Holding Corporation.
5. A true and correct copy of any document consisting of, or referring or relating to, any agreement for the purchase of any real property from Michael Sheehan by Bally Total Fitness Holding Corporation, any entity related to Bally Total Fitness Holding Corporation, and/or any agent or other entity acting on behalf of any Bally entity.
6. A true and correct copy of any document consisting of, or referring or relating to, any housing or other accommodations obtained for or utilized by Michael Sheehan since June 24, 2008.
7. A true and correct copy of any document consisting of, or referring or relating to, any monetary expenditures made by, or on behalf of, Michael Sheehan since June 24, 2008.

including, but not limited to, bank and credit card statements, receipts, invoices, and/or any other confirmations of purchase.

8. A true and correct copy of any document consisting of, or referring or relating to, any travel arrangements made for or utilized by Michael Sheehan since June 24, 2008.

9. A true and correct copy of any document, from January 1, 2008 to the present, referring or relating to the intent of Michael Sheehan to remain a citizen of California or to become a citizen of Illinois and/or the intent of Bally Total Fitness Holding Corporation and/or any entity related to Bally Total Fitness Holding Corporation for Michael Sheehan to become a citizen of Illinois.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing PLAINTIFF'S AMENDED NOTICE OF DEPOSITION OF DEFENDANT MICHAEL SHEEHAN was served on the below counsel by email and hand delivery on July 17, 2008:

Kimball R. Anderson
Cardelle B. Spangler
Amanda C. Wiley
Winston & Strawn LLP
35 W. Wacker Drive
Chicago, Illinois 60601
kanderson@winston.com
cspangler@winston.com
awiley@winston.com

By: /s/ Deanna R. Swits
An attorney for Plaintiff 24 Hour Fitness USA, Inc.

Ex. 3

Bally Total Fitness Announces New Chief Executive Officer

Page 1 of 2



Home

About us | Mobile/PDA | News Alerts | Disclaimer | Contact

Bally Total Fitness Announces New Chief Executive Officer

Posted : Tue, 24 Jun 2008 16:01:04 GMT

Author : Bally Total Fitness

Category : [Press Release](#)

News Alerts by Email click here)

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Yahoo.com[Gyms Near You](#)We list the areas local gyms in one place. Find the gym you want today.
[www.GymTicket.com](#)[Bally Total Fitness](#)Check Out Local.com To Find Bally Total Fitness In Your Area!
Local.com[Interim & Turnaround CEOs](#)Altamont Mgmt - Your First Choice for Interim and Turnaround CEOs
[www.altamontmanagement.com](#)

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President, Operations of 24 Hour Fitness. In addition to his comprehensive experience in the fitness industry, Mr. Sheehan has played key operational, finance and sales roles with multi-unit consumer retailers, including management roles with Pepsico, Nestle and Yum Brands, a food service holding company with well-known brands including Taco Bell, Kentucky Fried Chicken and Pizza Hut. Mr. Sheehan is a graduate of Oregon State University (Bachelor of Science, Finance).

Michael Feder, an interim manager from AlixPartners, LLP, serving as Chief Operating Officer of Bally Total Fitness, said, "We are delighted to welcome Mike to Bally. Our Board of Directors was committed to hiring a CEO who was the best possible fit for the role and they have certainly achieved that goal. We believe that Mike has the ideal blend of experience, leadership skills, creativity and commitment to health and fitness. I am confident that under Mike's leadership, Bally will thrive."

Mr. Sheehan said, "I am looking forward to joining the Bally team and I am eager to add value to this established brand. For many years, Bally has been a leader in the fitness industry -- Bally's facilities, fitness programming and personnel are among the best in the business. Under my leadership, Bally will continue to focus on providing high-quality comprehensive fitness experiences to our members."

About Bally Total Fitness

Bally Total Fitness is among the largest commercial operators of fitness centers in the U.S., with 352 facilities operating under the Bally Total Fitness(R) and Bally Sports Clubs(R) brands. Bally offers a unique platform for distribution of a wide range of products and services targeted to active, fitness-conscious adult consumers.

SOURCE: Bally Total Fitness

[PR Newswire](#)

11/24/2008 16:01

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Find Out Which Ones Can Brighten Your Smile. And Which Ones Can't! [www.Best-Teeth-Whitening.com](#)

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Search prices and amenities for gyms in your area. Try it now. [www.MyPerfectGym.com](#)

elements for women

Expand your training business with an elements franchise [www.elementsforwomen.com](#)

health club billing

health club management software and payment processing services [www.ehtfinancial.com](#)

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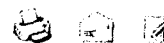


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[www.altamontmanagement.com](#)

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[Vislage.com](#)

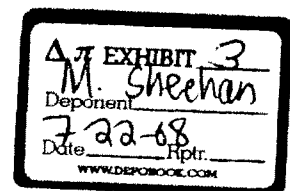
Free Local Gym Search

Search prices and amenities for gyms in your area. Try it now.
[www.MyPerfectGym.com](#)

Teeth Whitening Warning

7 Teeth Whitening Products Tested, Rated, & Reviewed. A Must Read!
[www.Best-Teeth-Whitening.com](#)

More



Ex. 4

BALLY TOTAL FITNESS HOLDING CORPORATION
8700 WEST BRYN MAWR
CHICAGO, ILLINOIS 60631

PERSONAL AND CONFIDENTIAL

Michael Sheehan

Re: Offer of Employment

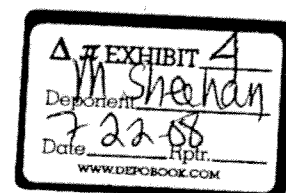
Dear Mike:

On behalf of the Board of Directors of Bally Total Fitness Holding Corporation (the "Company"), I am pleased to confirm to you the following offer to serve as the Company's Chief Executive Officer.

in Chicago, Illinois.

and your office will be located

REDACTED



Michael Sheehan

Page 2

REDACTED

Michael Sheehan

Page 3

REDACTED

Relocation Benefit: Should you sell your San Francisco area residence within 18 months of the Start Date and the net sales price is less than your cost of acquiring that residence, plus documented capital improvements of approximately \$50,000, the Company will reimburse you for the difference. If you are due the difference between the sales price and your cost of acquiring that residence, such payment will be grossed-up to cover taxes due on this payment. This benefit will be capped at \$1 million, inclusive of any such tax gross up. You agree to move your permanent residence to the Chicago area promptly following the Start Date, but in any event not later than July 30, 2008. In addition, you will be eligible for the following relocation benefits:

- You will be provided \$10,000 net to cover all of your living expenses, any miscellaneous relocation expenses, and temporary housing expenses beyond the first 90-day period provided by the Company.
- During your interim living period, the Company will pay for two trips a month for up to four months for you and your spouse (i.e., a maximum of eight trips for each of you) for home visits and/or house hunting trips in the Chicago area.
- You will be provided up to 90 days of corporate apartment housing in the Chicago area during the period of time before you have relocated your household to a local residence.

Michael Sheehan

Page 4

- The Company will cover reasonable and customary closing costs (excluding discount points, hazard insurance, deposits and other prepaid expenses) associated with the sale of your existing primary residence in San Francisco and the purchase of a new residence in the Chicago area.
- A moving company approved by the Company will arrange for and cover the costs of packing and transporting your household goods and vehicles in accordance with company policy. All taxable relocation benefits will be grossed up in accordance with the Company's relocation policy.
- If you voluntarily leave the Company or are terminated for cause within 12 months from the date of the last relocation payment to you related to the sale of your San Francisco area residence, you will be required to reimburse the Company for all related payments.

REDACTED

Michael Sheehan

Page 5

REDACTED

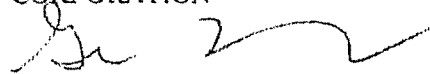
Michael Sheehan

Page 6

REDACTED

Sincerely,

BALLY TOTAL FITNESS HOLDING
CORPORATION

A handwritten signature in dark ink, appearing to read 'Gene Davis', with a long horizontal flourish extending to the right.

Gene Davis
For the Board of Directors
Bally Total Fitness Holding Corporation

cc: Board of Directors

Accepted this ___ day of June, 2008

Michael Sheehan

06/22/2008 16:27 925-277-1495

FEDEX KINKO'S 5154

PAGE 01

Michael Sheehan
June 20, 2008
Page 6

By e-mail

Redacted

I trust these terms are acceptable to you and I look forward to working with you. Please indicate your acceptance of the above terms by signing in the space indicated below and returning a fully executed copy to me.

Sincerely,

BALLY TOTAL FITNESS HOLDING
CORPORATION

Gene Davis
Gene Davis

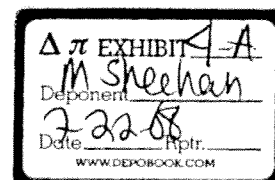
For the Board of Directors

Bally Total Fitness Holding Corporation

cc: Board of Directors

Accepted this 20 day of June, 2008

Michael Sheehan
Michael Sheehan



Ex. 5

Raimondi, Mary

From: Gant Travel Management [bally@ganttravel.com]
Sent: Wednesday, June 25, 2008 1:05 PM
To: Raimondi, Mary
Cc: Travel Department; Farruggia, Barbara
Subject: 6/30/08: Ticketed itinerary for MICHAEL SHEEHAN to Chicago IL
Attachments: itineraryTSZFL4_25JUN.pdf



Gant Travel Management

Gant Travel Management
 650 East Devon, Suite 115
 Itasca, IL 60143
 Phone: (630) 227-3870 Fax: (630) 227-3875
 Toll Free: (800) 323-7459



What is this?

Wednesday, 25JUN 2008 02:04 PM (EST)

Passengers: MICHAEL SHEEHAN (19000)

Agency Reference Number: TSZFL4

Agent: Louise -x1151

[Click here](#) for a copy of your E-ticket receipt

Please review this itinerary for accuracy and reply to this email within 24 hours if any discrepancies.
 Ticketed itineraries are subject to airline fees and additional charges if changed for any reason.

AIR Monday, 30JUN 2008

United Airlines

From: (SFO) San Francisco CA, USA

To: (ORD) Chicago O'Hare IL, USA

Stops: 0

Seats: 03B

Equipment: Boeing 757 200 Jet

DEPARTS SFO TERMINAL 3 -- ARRIVES ORD TERMINAL 1

Frequent Flyer number: UA00175825959 - M SHEEHAN

United Airlines Confirmation number is TSZFL4

Flight Number: 830

Class: P-First

Depart: 10:55 AM

Arrive: 05:06 PM

Duration: 4 hour(s) 11 minute(s)

Status: CONFIRMED

Miles: 1846

Meal: LUNCH

HOTEL Monday, 30JUN 2008

RENAISSANCE OHARE (RENAISSANCE)

8500 West Bryn Mawr Avenue Chicago IL 60631 US

Number of Rooms: 1

Phone: 773-380-9800

Rate: USD 229

Check out: Thursday, 3JUL 2008

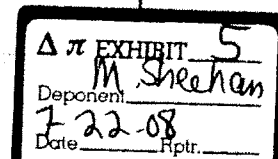
BEST AVAILABLE RATE / NON SMOKING KING REQUESTED

Confirmation Number: 82036181

Fax: 773-380-9601

Room GUARANTEED TO MASTER CARD

7/16/2008



GUARANTEED TO MASTERCARD / CANCEL BY 4PM DAY OF ARRIVAL

R

Thursday, 3JUL 2008

United Airlines

From: (ORD) Chicago O'Hare IL, USA

To: (SFO) San Francisco CA, USA

Stops: 0

Seats: 02C

Equipment: Boeing 757 200 Jet

DEPARTS ORD TERMINAL 1 - - ARRIVES SFO TERMINAL 3

Frequent Flyer number: UA00175825959 - M SHEEHAN

United Airlines Confirmation number is TSZFL4

Flight Number: 907

Class: P-First

Depart: 05:05 PM

Arrive: 07:35 PM

Duration: 4 hour(s) 30 minute(s)

Status: CONFIRMED

Miles: 1846

Meal: DINNER

OTHER

Wednesday, 1OCT 2008

THANK YOU FOR USING GANT TRAVEL

TRAVEL PURPOSE: RELOCATION

TRIP APPROVED 24JUN BY BARB FARRUGGIA

Due to security regulations, a photo I.D. is required at check-in

Boarding pass must be obtained prior to entering security checkpoint.

Contact Gant prior to departure if this transaction is not used.

Ticket Information:

Ticket for: MICHAEL SHEEHAN

Date issued: 06/24/08 Invoice nbr: 0

et Nbr: 0167512521838 Electronic: Yes

Amount: 2736.64 USD

arged to: CA*****06735

Svc fee for: MICHAEL SHEEHAN

Date issued: 06/24/08

Document Nbr: 8908133423974

Amount: 35.00 USD

Total Tickets: 2736.64

Total Fees: 35.00

Total Amount: 2771.64

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Be sure to [visit our website](#) for additional travel tools and information

Click here to get advance boarding passes on these carriers:

[United](#)

For After hours emergency service: 877-546-2406 - CODE WH6

Due to security regulations, a photo I.D. is required at check-in

Boarding pass must be obtained prior to entering security checkpoint.

For Domestic flights - check in 2 hours prior to departure

For International flights - check in 3 hours prior to departure

Contact Gant prior to departure if this transaction is not used.

If you need to cancel this hotel reservation, contact Gant Travel Management.
Be sure to obtain a cancellation number for your records.

ik you -- Louise -x1151

7/16/2008

Raimondi, Mary

From: Gant Travel Management [bally@ganttravel.com]
Sent: Thursday, July 03, 2008 2:08 PM
To: Raimondi, Mary
Cc: Travel Department
Subject: 7/3/08: Ticketed Itinerary for MICHAEL SHEEHAN to San Francisco CA
Attachments: itineraryR5XV1W_03JUL.pdf



Gant Travel Management

Gant Travel Management
 650 East Devon, Suite 115
 Itasca, IL 60143
 Phone: (630) 227-3870 Fax: (630) 227-3875
 Toll Free: (800) 323-7459

Add to Calendar

[What is this?](#)

Thursday, 3JUL 2008 03:07 PM (EDT)

Passengers: MICHAEL SHEEHAN (19000)

Agency Reference Number: R5XV1W

Agent: Louise -x1151

[here](#) for a copy of your E-ticket receipt

Please review this itinerary for accuracy and reply to this email within 24 hours if any discrepancies.
 Ticketed itineraries are subject to airline fees and additional charges if changed for any reason.

AIR	Thursday, 3JUL 2008		
American Airlines		Flight Number: 1835	
From: (ORD) Chicago O'Hare IL, USA		Depart: 05:20 PM	Class: H-Coach
To: (SFO) San Francisco CA, USA		Arrive: 07:50 PM	
Stops: 0		Duration: 4 hour(s) 30 minute(s)	
Seats: 20B		Status: CONFIRMED	Miles: 1846
Equipment: McDonnell Douglas MD-83 Jet		Meal: FOOD TO PURCHASE	
DEPARTS ORD TERMINAL 3 -- ARRIVES SFO TERMINAL 3			
American Airlines Confirmation number is FDFYRZ			

TRAVEL PURPOSE: RELOCATION

TRIP APPROVED 03JUL BY BARB FARRUGGIA

Due to security regulations, a photo I.D. is required at check-in

Boarding pass must be obtained prior to entering security checkpoint.

Contact Gant prior to departure if this transaction is not used.

Ticket Information:

Ticket for: MICHAEL SHEEHAN

Date issued: 07/03/08 **Invoice nbr:** 0

7/16/2008

Ticket Nbr: 0017512523154 Electronic: Yes Amount: 857.50 USD
argued to: CA*****06735

Svc fee for: MICHAEL SHEEHAN

Date issued: 07/03/08

Document Nbr: 8908136166453

Amount: 35.00 USD

Total Tickets: 857.50

Total Fees: 35.00

Total Amount: 892.50

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Be sure to visit our website for additional travel tools and information

Click here to get advance boarding passes on these carriers:

American

For After hours emergency service: 877-546-2406 - CODE WH6

Due to security regulations, a photo I.D. is required at check-in

Boarding pass must be obtained prior to entering security checkpoint.

For Domestic flights - check in 2 hours prior to departure

For International flights - check in 3 hours prior to departure

Contact Gant prior to departure if this transaction is not used.

Thank you - Louise -x1151

Raimondi, Mary

From: Gant Travel Management [bally@ganttravel.com]
Sent: Thursday, July 03, 2008 10:18 AM
To: Raimondi, Mary
Cc: Travel Department
Subject: 7/7/08: Itinerary for MICHAEL SHEEHAN to Chicago IL
Attachments: ItineraryM0PV16_03JUL.pdf



Gant Travel Management

Gant Travel Management
 650 East Devon, Suite 115
 Itasca, IL 60143
 Phone: (630) 227-3870 Fax: (630) 227-3875
 Toll Free: (800) 323-7459



[What is this?](#)

Thursday, 3JUL 2008 11:17 AM (EDT)

Passengers: MICHAEL SHEEHAN (19000)

Agency Reference Number: M0PV16

Agent: Louise -x1151

[Click here](#) for a copy of your E-ticket receipt

Please review this itinerary for accuracy and reply to this email within 24 hours if any discrepancies.
 Ticketed itineraries are subject to airline fees and additional charges if changed for any reason.

AIR Monday, 7JUL 2008

Southwest Airlines

From: (OAK) Oakland CA, USA

To: (MDW) Chicago Midway IL, USA

Stops: 0

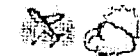
Flight Number: 3187

Depart: 02:50 PM

Arrive: 08:50 PM

Duration: 4 hour(s) 0 minute(s)

Status: CONFIRMED



Class: K-Coach

Equipment: Boeing 737-700 Jet

DEPARTS OAK TERMINAL 2

Southwest Airlines Confirmation number is 2JQQKD

Miles: 1844

HOTEL Monday, 7JUL 2008

RENAISSANCE OHARE (RENAISSANCE)

8500 West Bryn Mawr Avenue Chicago IL 60631 US

Number of Rooms: 1

Phone: 773-380-9600

Rate: USD 229

Check out: Friday, 11JUL 2008

Confirmation Number: 85572613

Fax: 773-380-9601

Room GUARANTEED TO MASTER CARD



CONTACT GANT OR HOTEL DIRECTLY IF YOU NEED TO CANCEL THIS RESERVATION.
 BE SURE TO OBTAIN A CANCELLATION NUMBER FOR YOUR RECORDS.

7/16/2008

TRAVEL PURPOSE: RELOCATION
CONFIRMATION NUMBER FOR SOUTHWEST IS 2SKBWS
SOUTHWEST FREQUENT FLIER NUMBER APPLIED
Due to security regulations, a photo I.D. is required at check-in
Boarding pass must be obtained prior to entering security checkpoint.
Contact Gant prior to departure if this transaction is not used.

The Gant Equation Great People + Fantastic Technology = Delighted Travelers
Be sure to visit our website for additional travel tools and information
Click here to get advance boarding passes on these carriers:
Southwest

For After hours emergency service: 877-546-2406 - CODE WH6
Due to security regulations, a photo I.D. is required at check-in
Boarding pass must be obtained prior to entering security checkpoint.
For Domestic flights - check in 2 hours prior to departure
For International flights - check in 3 hours prior to departure
Contact Gant prior to departure if this transaction is not used.

Thank you – Louise -x1151

7/16/2008

Ex 6

BALLY TOTAL FITNESS

8700 W. Bryn Mawr, 2nd Floor, Chicago, IL 60631 (773) 380-3000

NAME: Michael SheehanWEEK ENDED SATURDAY: 7/5/2008RETURN TO: Mary Raimondi - Chicago corporate

DAY DATE	SUNDAY 6/29/2007	MONDAY 6/30/2007	TUESDAY 7/1/2007	WEDNESDAY 7/2/2007	THURSDAY 7/3/2007	FRIDAY 7/4/2007	SATURDAY 7/5/2007	TOTAL																		
OVERNIGHT AT: CITY			Chicago																							
MEALS:																										
BREAKFAST*		\$4.44						\$4.44																		
LUNCH*								\$0.00																		
DINNER*		\$11.00			\$31.00			\$42.00																		
ENTERTAINMENT*								\$0.00																		
SUBTOTAL	\$0.00	\$15.44	\$0.00	\$0.00	\$31.00	\$0.00	\$0.00	\$46.44																		
AIR-RAIL-BUS		\$2,771.64						\$2,771.64																		
TAXI		\$20.00						\$20.00																		
SEDAN SERVICE								\$0.00																		
PARKING								\$0.00																		
HOTEL ROOM								\$0.00																		
HOTEL (to be reimbursed)							\$842.35	\$842.35																		
TELEPHONE								\$0.00																		
AUTO-GAS/TOLLS**								\$0.00																		
OTHER** (gratuities)								\$0.00																		
SUBTOTAL	\$0.00	\$2,791.64	\$0.00	\$0.00	\$0.00	\$0.00	\$842.35	\$3,633.99																		
TOTAL	\$0.00	\$2,807.08	\$0.00	\$0.00	\$31.00	\$0.00	\$842.35	\$3,680.43																		
LESS AMOUNTS PAID BY THE COMPANY (CIRCLE AMOUNTS ABOVE)								(\$2,771.64)																		
LESS AMOUNTS PAID BY THE COMPANY (CIRCLE AMOUNTS ABOVE)								(\$842.35)																		
DUE TO (FROM) EMPLOYEE								\$66.44																		
<table border="1"> <thead> <tr> <th>DATE</th> <th>BUSINESS PURPOSE OF EACH TRIP</th> </tr> </thead> <tbody> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> <tr><td> </td><td> </td></tr> </tbody> </table>									DATE	BUSINESS PURPOSE OF EACH TRIP																
DATE	BUSINESS PURPOSE OF EACH TRIP																									

EXHIBIT 6
 Deponent: M. Sheehan
 Date: 7-22-08 Rptr.
 WWW.DEPOBOOK.COM

 EMPLOYEE SIGNATURE [Signature] DATE 7/15/08
 APPROVER SIGNATURE [Signature] DATE 7/16/08

* Complete reverse side when paying for meals/entertainment of others.
 ** Complete reverse side.



RENAISSANCE.
CHICAGO O'HARE HOTEL RENAISSANCE O'HARE SUITES

8500 WEST BRYN MAWR AVENUE
CHICAGO, IL 60631
(773) 380 9600
RENAISSANCEHOTELS.COM/CHIBR

GUEST FOLIO

1630 SHEEHAN/MICHAEL 229.00 07/03/08 13:00 10245
ROOM NAME RATE DEPART TIME ACCT#
RENA TYPE 06/30/08 17:52
18 ARRIVE TIME

ROOM CLERK ADDRESS PAYMENT MR#: 826031643

DATE ROOM REFERENCE CHARGES CREDIT BALANCE

06/30	ROOM	1630, 1	229.00
06/30	ROOM TAX	1630, 1	27.25
06/30	OCC TAX	1630, 1	8.02
07/01	LAUNDRY	AG	17.64
07/01	ROOM	1630, 1	229.00
07/01	ROOM TAX	1630, 1	27.25
07/01	OCC TAX	1630, 1	8.02
07/02	FRESH	38631630	31.90
07/02	ROOM	1630, 1	229.00
07/02	ROOM TAX	1630, 1	27.25
07/02	OCC TAX	1630, 1	8.02
07/03	MC CARD		

\$842.35

TO BE SETTLED TO: MASTERCARD CURRENT BALANCE .00

THANK YOU FOR CHOOSING RENAISSANCE! TO EXPEDITE YOUR CHECK-OUT, PLEASE CALL THE FRONT DESK, OR PRESS "MENU" ON YOUR TV REMOTE CONTROL TO ACCESS VIDEO CHECK-OUT.

----- EXP. REPORT SUMMARY -----

06/30	ROOM	229.00	
	ROOM TAX	27.25	
	OCC TAX	8.02	
07/01	LAUNDRY		264.27
	ROOM	17.64	
	ROOM TAX	229.00	
	OCC TAX	27.25	
		8.02	
07/02	FRESH		281.91
	ROOM	31.90	
	ROOM TAX	229.00	
	OCC TAX	27.25	
		8.02	
			296.17

GET ALL YOUR HOTEL BILLS BY EMAIL BY UPDATING YOUR MARRIOTT REWARDS PREFERENCES. OR, ASK THE FRONT DESK TO EMAIL YOUR BILL FOR THIS STAY. SEE "INTERNET PRIVACY STATEMENT" ON MARRIOTT.COM

Marriott Rewards Account # 826031643

Date 06/30/08-07/03/08 Est. Eligible Revenue

\$718.90

Est. Points Earned: 7189

For account activity: 801-468-4000 or www.Marriott.com

RENAISSANCE.
CHICAGO O'HARE HOTEL

8500 WEST BRYN MAWR AVENUE
CHICAGO, IL 60631
(773) 380 9600
RENAISSANCEHOTELS.COM/CHIBR

ACCOUNTS PAST 30 DAYS SUBJECT TO SERVICE CHARGE OF 1.5% PER MONTH (ANNUAL RATE OF 18%)

This statement is your only receipt. You have agreed to pay in cash or by approved personal check or to authorize us to charge your credit card for all amounts charged to you. The amount shown in the credits column opposite any credit card entry in the reference column above will be charged to the credit card number set forth above. (The credit card company will bill in the usual manner.) If for any reason the credit card company does not make payment on this account, you will owe us such amount. If you are direct-billed, in the event payment is not made within 25 days after check-out, you will owe us interest from the check-out date on any unpaid amount at the rate of 1.5% per month (ANNUAL RATE 18%), or the maximum allowed by law, plus the reasonable cost of collection, including attorney fees.

Signature X

FOR RESERVATIONS AT ANY RENAISSANCE HOTEL, CALL 1 (800) HOTELS-1

Raimondi, Mary

From: Gant Travel Management [bally@ganttravel.com]
 Sent: Wednesday, June 25, 2008 1:05 PM
 To: Raimondi, Mary
 Cc: Travel Department; Farruggia, Barbara
 Subject: 6/30/08: Ticketed Itinerary for MICHAEL SHEEHAN to Chicago IL
 Attachments: ItineraryTSZFL4_25JUN.pdf



Gant Travel Management

Gant Travel Management
 650 East Devon, Suite 115
 Itasca, IL 60143
 Phone: (630) 227-3870 Fax: (630) 227-3875
 Toll Free: (800) 323-7459

[What is this?](#)

Wednesday, 25JUN 2008 02:04 PM (EST)

Passengers: MICHAEL SHEEHAN (19000)

Agency Reference Number: TSZFL4

Agent: Louise -x1151

[here](#) for a copy of your E-ticket receipt

Please review this itinerary for accuracy and reply to this email within 24 hours if any discrepancies.
 Ticketed itineraries are subject to airline fees and additional charges if changed for any reason.

AIR Monday, 30JUN 2008

United Airlines

From: (SFO) San Francisco CA, USA

To: (ORD) Chicago O'Hare IL, USA

Stops: 0

Seats: 03B

Equipment: Boeing 757 200 Jet

DEPARTS SFO TERMINAL 3 - - ARRIVES ORD TERMINAL 1

Frequent Flyer number: UA00175825959 - M SHEEHAN

United Airlines Confirmation number is TSZFL4

Flight Number: 830

Class: P-First

Depart: 10:55 AM

Arrive: 05:08 PM

Duration: 4 hour(s) 11 minute(s)

Status: CONFIRMED

Miles: 1846

Meal: LUNCH

HOTEL Monday, 30JUN 2008

RENAISSANCE OHARE (RENAISSANCE)

8500 West Bryn Mawr Avenue Chicago IL 60631 US

Number of Rooms: 1

Phone: 773-380-9600

Rate: USD 229

Check out: Thursday, 3JUL 2008

BEST AVAILABLE RATE / NON SMOKING KING REQUESTED

Confirmation Number: 82036181

Fax: 773-380-9601

Room GUARANTEED TO MASTER CARD

7/16/2008

GUARANTEED TO MASTERCARD / CANCEL BY 4PM DAY OF ARRIVAL

Thursday, 3JUL 2008

United Airlines

From: (ORD) Chicago O'Hare IL, USA

To: (SFO) San Francisco CA, USA

Stops: 0

Seats: 02C

Equipment: Boeing 757 200 Jet

DEPARTS ORD TERMINAL 1 - - ARRIVES SFO TERMINAL 3

Frequent Flyer number: UA00175825959 - M SHEEHAN

United Airlines Confirmation number is TSZFL4

Flight Number: 907

Class: P-First

Depart: 05:05 PM

Arrive: 07:35 PM

Duration: 4 hour(s) 30 minute(s)

Status: CONFIRMED

Miles: 1846

Meal: DINNER

OTHER

Wednesday, 1OCT 2008

THANK YOU FOR USING GANT TRAVEL

TRAVEL PURPOSE: RELOCATION

TRIP APPROVED 24JUN BY BARB FARRUGGIA

Due to security regulations, a photo I.D. is required at check-in

Boarding pass must be obtained prior to entering security checkpoint.

Contact Gant prior to departure if this transaction is not used.

Ticket Information:

Ticket for: MICHAEL SHEEHAN

Date issued: 06/24/08

Invoice nbr: 0

Ticket Nbr: 0167512521838

Electronic: Yes

Amount: 2736.64 USD

Argued to: CA*****06735

Svc fee for: MICHAEL SHEEHAN

Date issued: 06/24/08

Document Nbr: 8908133423974

Amount: 35.00 USD

Total Tickets: 2736.64

Total Fees: 35.00

Total Amount: 2771.64

The Gant Equation Great People + Fantastic Technology = Delighted Travelers

Be sure to visit our website for additional travel tools and information

Click here to get advance boarding passes on these carriers:

United

For After hours emergency service: 877-546-2406 - CODE WH6

Due to security regulations, a photo I.D. is required at check-in

Boarding pass must be obtained prior to entering security checkpoint.

For Domestic flights - check in 2 hours prior to departure

For International flights - check in 3 hours prior to departure

Contact Gant prior to departure if this transaction is not used.

If you need to cancel this hotel reservation, contact Gant Travel Management.

Be sure to obtain a cancellation number for your records.

Thank you -- Louise -x1151

7/16/2008

6/29/08 - 7/5/08



2550 W. Lexington
Chicago, IL
312.666.1100

Date 6/30 Time 5:45

From Airport

To Residence

Cab No. _____ Driver _____

Cab Fare 8.20

Lost & Found: ChicagoDispatcher.com

Looking for a cab to drive?

Drive With The Best!

-Vans-

-Sedans-

-Hybrids-

-Wheelchair Vans-

-Stretch Crown Vics-

Call 312-666-1100

*Want to lease your medallion?
We pay \$550/month plus expenses.*

Receipt Advertising: ChicagoDispatcher.com

BENNIGAN'S

8420 W BRYN MAWR
CHICAGO, IL 60631
773-380-1010

463 Chaunese

Tbl 81/1	Chk 3357	Gst
	Jun30'08 08:43PM	
1 Water		0.00
1 GG Bacon Burger		8.29
Medium		
Wheat Bun		
No		
Subtotal		8.29
Tax		0.79
08:57 Total		9.08

Thank you for coming to
Bennigan's Grill & Tavern!!!

BENNIGAN'S

8420 W BRYN MAWR
CHICAGO, IL 60631
773-380-1010

Time: Jun30'08 09:02PM
Card Type: Visa
Card #: XXXXXXXXXXXXX0708
Exp Date: XX/XX
Auth Code: 00622B
Check: 3357
Table: 81/1
Server: 463 Chaunese
VSCA: Auth Driver
MICHAEL SHEEHAN

Subtotal: 9.08

Tip: 1.92

Total: 11.00

Signature [Signature]
I agree to pay above total
according to my card issuer
agreement.

CUSTOMER COPY



San Francisco Intl Airport
San Francisco, CA 94128
(650) 821-8954

PEET'S 72
Date: Jun30'08 10:06AM
Card Type: VISA
Acct #: XXXXXXXXXXXXX0708
Exp Date: 04/11
Auth Code: 096208
Check: 3985
Server: 125 EVANGELI
MICHAEL SHEEHAN

bttotal: 4.44

ATUITY

AL

SIGNATURE

I agree to pay above total
according to my card issuer
agreement.

* * * CUSTOMER COPY * * *

HMSHOST
MACARONI GRILL 773-686-6180
CHICAGO O'HARE AIRPORT
CHECK: 5810
TABLE: 310/1
SERVER: 9455 MARCO
DATE: JUL03'08 4:49PM
CARD TYPE: VISA AO 4#
ACCT #: XXXXXXXXXXXXX0708
EXP DATE: XX/XX
AUTH CODE: 055098
MICHAEL SHEEHAN

TOTAL: 26.17
TIP: 4.83

TOTAL

31.00
X *[Signature]*
I AGREE TO PAY THE ABOVE AMOUNT
IN ACCORDANCE WITH THE CARD
ISSUER'S AGREEMENT.